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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1992

KENYA*

[13 January 2000]

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* The Government of Kenya transmitted copies of all the government documents, studies and statutes referred to in the report. These are available at the secretariat.

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I. INTRODUCTION: KENYA'S SOCIO-ECONOMIC, DEMOGRAPHIC AND CULTURAL BACKGROUND

1. The Government of Kenya recognizes that a sound social and economic base is important in formulating policies, strategies, programmes and legislation aimed at fulfilling the rights of children. This section presents the geographical, political, administrative and economic context in which the Convention on the Rights of the Child is being implemented. The key issues of poverty, the labour force, demography, socio-cultural perspectives and advocacy channels are also discussed. The focus is on how they interact to influence the situation of children.

A. Geography

2. Kenya covers an area of 582,646 km^2. It lies between 3° north and 5° south of the equator, and between 33° and 42° east longitude. It borders Tanzania to the south, the Somali Democratic Republic to the east and north-east, Ethiopia to the north, the Sudan to the north-west, Uganda to the west, and the Indian Ocean to the south-east. The diverse landscapes have a direct influence on the climatic conditions resulting in distinct agro-ecological zones.

3. The most distinct element in Kenya's climate is rainfall. Most parts of the country experience a bimodal pattern of rainfall, with the long rains coming in March and May, and the short rains between October and December. The country is divided into seven agro-ecological zones. These range from the arid areas in the north-east to the humid areas in the south-east.

4. Arable areas cover only 18 per cent of the country. They provide the main livelihood for about 80 per cent of the population. These areas have a high potential for plant growth and a low risk of crop failure. The remaining 82 per cent are semi-arid and arid areas. These agro-ecological zones determine the human settlement patterns and the agricultural and economic potential, which have direct influence on the well-being of children in the country.

B. Demographic profile

1. Fertility, mortality and population growth rates

5. Kenya's population was estimated at 29 million in mid-1997. It is projected at 33.3 million by mid-2003, and 34.6 million by mid-2005. These projections assume a moderate decline in fertility and mortality rates. They also take into account the effects of the AIDS epidemic. The population grew at the rate of 3.0 per cent per annum during the period 1990-1995. However, it is expected to decline to 2.5 per cent per annum during the period 1995-2000 and to 2.2 per cent per annum during the period 2000-2005.

6. There has been a rapid decline in fertility. This is mainly attributed to the increased used of contraception (indicated by the increase in the contraceptive prevalence rate among married women aged 15 to 49 years, which was estimated at 17 per cent in 1984, 27 per cent in 1989 and 33 per cent in 1993), and improvements in socio-economic determinants. According to the 1989 Population Census, the national average life expectancy at birth was 57.5 years for males and 61.4 years for females. With the HIV/AIDS pandemic, life expectancy is expected to

decline to 52.8 years for males and 53.4 years for females in the years 2000-2005. Based on evidence of levelling off and decline in childhood mortality from the 1993 Kenya Demographic and Health Survey (KDHS) data, the infant mortality rate (per thousand live births) was estimated at 63 in 1989, 62 in 1993, and is projected at 63 in the period 2000-2005.

7. Current and projected levels and differentials in fertility and mortality have implications for the ultimate size, structure and regional distribution of the population, and for prospects of sustainable development.

2. Population structure

8. The combination of declining mortality levels and high fertility levels in the past three decades account for Kenya's very large proportion of children and young people. As table 1 shows, the total number of children, estimated at 15.1 million in 1997, is expected to increase to about 16.2 million in 2003. Their proportion of the total population is expected to decline slightly from 52 per cent in 1997 to 48.7 per cent in 2003. Similarly, the number of children under-5 years is expected to increase slightly from 4.7 million in 1997 to 4.9 million in 2003.

Table 1. Projected population for Kenya, 1997-2003 (in '000s)

Population segment			Projections (in '000s) assuming medium fertility decline, including AIDS					
	Base year 1989		1992		1997		2003	
	No.	%	No.	%	No.	%	No.	%
Total population	23 150	100.0	25 240	100.0	29 011	100.0	33 264	100.0
Children 0-4 years	4 190	18.1	4 421	17.5	4 741	16.3	4 907	14.8
Children 0-14 years	11 316	48.9	11 999	47.5	12 966	44.7	13 829	41.6
Children 0-17 years	12 761	55.1	13 686	54.2	15 096	52.0	16 210	48.7
Persons 15-64 years	11 315	48.9	12 645	50.1	15 273	52.6	18 418	55.4
Persons 65+ years	519	2.2	596	2.4	772	2.7	1 017	3.1
Females 15-49 years	4 999	22.56	5 585	22.1	6 733	23.2	8 075	24.3
Primary school age (6-13 years)	5 701	24.6	6 077	24.1	6 576	22.7	7 141	21.5
Secondary school age (14-17 years)	2 106	9.1	2 442	9.7	2 966	10.2	3 260	9.8
Dependency ratio	1.05:1		1.00:1		0.90:1		0.81:1	

Source: Kenya Population Census, 1989, Analytical Report, vol. VII.

9. The ongoing and future demands created by a large young population, particularly in terms of health, education and employment, present major challenges and responsibilities. It is appreciated that children are the most important resource for the future. Greater investment in them by parents and the society is essential to attain sustainable economic growth and development. The slight increase in the number and proportion of elderly persons in relation to the working age population has significant implications, particularly for the future viability of existing formal and informal programmes for assisting elderly people. Although data on persons with disabilities are lacking, the 1989 estimate based on the Population Census indicates that they constitute 10 per cent of the total population.

3. Population distribution, migration and urbanization

10. The population distribution in Kenya is generally uneven. It reflects the uneven distribution of agricultural potential and of employment opportunities. Other key factors influencing the pattern of population distribution include historical policies on land settlement. The most densely populated areas are found in the urban centres and around Lake Victoria, the highlands and the coastal strip, which have fertile soils and well-distributed reliable rainfall. The sparsely populated areas are the arid and semi-arid regions, which have poor soils and an inhospitable climate. The urban centres have a population density of about 2,000 persons per km^2, while the high-potential rural districts have about 300 persons per km^2. The arid and semi-arid areas have the lowest population density, with 2 persons per km^2.

11. There are four main flows of internal migration in Kenya. These are rural-rural, rural-urban, urban-rural and urban-urban. Rural-urban migration is the most dominant. Increasingly, migration is taking a new form where Kenyans displaced by internal conflict - such as tribal clashes - migrate in search of security. Internal migration in Kenya involves the more educated people and predominantly males of working age. There has, however, been an increase in female migrants. Kenya has also had growing numbers of refugees and asylum-seekers from neighbouring countries. There is a need to strengthen support by the international community to enable Kenya to enhance the protection and assistance especially of refugee women and children who are particularly vulnerable.

4. Legal, political and administrative structure

12. Kenya has a multi-party political system, with more than 20 registered political parties. There are three arms of government: the legislature, the executive and the judiciary. In 1998, the legislature comprised 210 elected and 12 nominated members of Parliament. The Attorney-General and the Speaker of the National Assembly are ex officio members. There is universal suffrage for all citizens over 18 years. The Electoral Commission of Kenya conducts elections every five years. Voting is by secret ballot. The Constitution of Kenya guarantees freedom of political participation, without discrimination on the basis of gender or race.

13. The administrative structure consists of centralized services from line ministries, the provincial administration under the Office of the President, and local authorities. In 1998, the central Government consisted of 25 ministries and several non-ministerial departments. Their role is to facilitate policy formulation and to deliver public services. This includes the implementation and monitoring of programmes and projects. In the provincial administrative system, the President appoints provincial commissioners for the 8 provinces and district commissioners for the 67 districts. Under these is a hierarchical structure consisting of district officers, chiefs and assistant chiefs, in charge of administrative divisions, locations and sublocations, respectively. The Government decentralized decision-making by introducing the District Focus for Rural Development (DFRD) strategy in 1983. Decentralization has facilitated more integrated planning, appropriate prioritization of projects, greater focus on proper targeting and project sustainability.

14. The local authorities are administrative structures established under the Local Government Act (Cap. 265, Laws of Kenya) to oversee the affairs of municipalities, towns and urban and county councils.

C. Economic overview

1. Economic policy framework

15. Kenya's main economic challenges are alleviation of poverty and creation of employment. Every year an estimated half a million people join the labour market. It is estimated that 47 per cent of the rural population and 29 per cent of the urban population is poor. The Government has adopted long- medium- and short-term policies to address these challenges. The long-term policy framework is contained in Sessional Paper No. 2 of 1996, Industrial Transformation to the Year 2020. This sessional paper details policies that will lay the structural foundation for transforming the country into a newly industrializing country (NIC) by the year 2020. It is hoped that this will help to alleviate poverty.

16. The medium-term policy framework is contained in the 8th National Development Plan covering the period 1997-2001. It focuses on raising growth and investment levels, promoting export-oriented industries, and restructuring the role of Government to focus on providing an enabling environment.

17. Kenya's short-term policy framework is contained in policy framework papers (PFPs) and annual budget statements.

2. Economic performance

18. Kenya's economy has undergone major reforms over the past 10 years. These include the removal of import, price and foreign exchange controls, which has opened up the domestic economy to stiff competition. Between 1993 and 1997, the economy recorded an average annual growth rate of 3.7 per cent. The period 1992-1993 was the worst in Kenya's economic history. During this period, the lowest growth rate was recorded in real GDP at 0.2 per cent in 1993 and 2.8 per cent in 1992. Prolonged drought, high inflation, excessive growth in the money supply and massive depreciation of the Kenya shilling marked the period. The growth rate for 1995 was 4.8 per cent. That for 1996 was 4.6 per cent. In 1997, for the second year running, the economy recorded a decline to 2.3 per cent against a projected growth of 5.0 per cent in 1996.

19. The slow growth was reflected in all sectors of the economy. The substantial fall in the growth rate resulted from a combination of factors. These include adverse weather conditions, rising input costs, electricity interruptions, dilapidated infrastructure, pre-election tension and violence, depressed investments, competition from imports arising from a liberalized trade regime, lack of investor confidence and labour unrest. During the reporting period, growth was also constrained by high-level corruption, which led to the import of duty free goods which competed unfairly with locally produced commodities. This has led to the decline of the manufacturing and agricultural sectors. High-level corruption has also severely discouraged foreign investment and led to the withdrawal of the Enhanced Structural Adjustment Facility

(ESAF) by the International Monetary Fund (IMF). This severely affected Kenya's macroeconomic stability. The withdrawal of ESAF has meant that Kenya cannot pay the huge internal debt or service the external debt. To reduce the budgetary deficits, there has been an increase in taxation, and reductions in expenditure on social services.

3. Expenditure on the social services sector

20. The Government of Kenya remains committed to the adequate allocation of resources for basic social services. It is especially committed to targets agreed on during the 1995 World Summit for Social Development, held in Copenhagen. The Summit proposed that a minimum of 20 per cent of budgetary expenditure and 20 per cent of foreign aid flows should be allocated to basic social services. These include basic education, primary health care, low-cost water and environmental sanitation, and nutrition programmes.

21. More than half the population has no access to safe drinking water despite government investment in social services. Urban water systems are overloaded and water-fetching is a great burden to women and children in rural areas. The 1994 Welfare Survey indicated that only 45 per cent of the population had access to safe drinking water. It estimated that only 30 per cent of gazetted urban areas had a sewage system. Inadequate effluent and wastewater treatment facilities in urban areas, especially in the slums, lead to serious environmental and health hazards. Sewage systems in major urban areas are disintegrating and the local authorities lack the capacity to manage and maintain them.

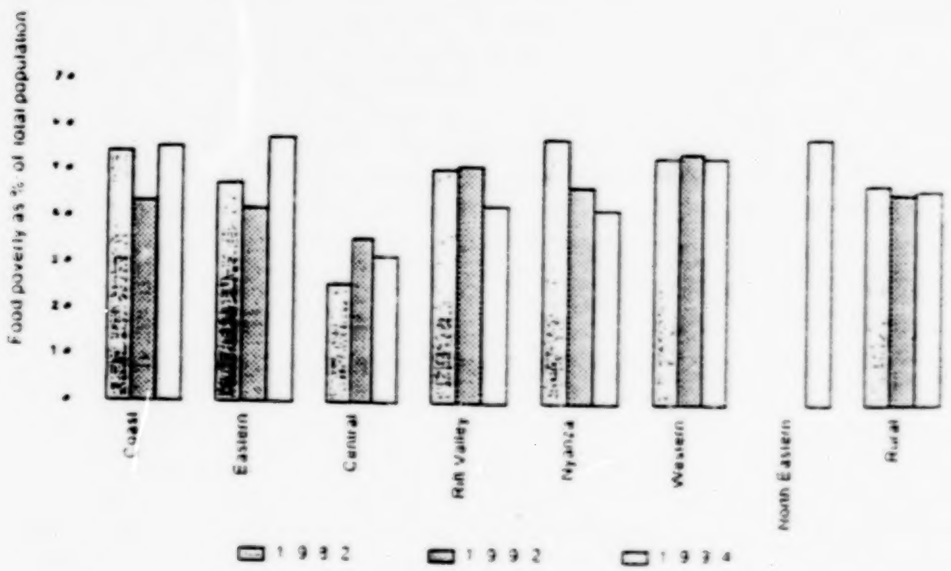
22. Adequate shelter and housing are another area of concern. According to a 1998 Ministry of Planning and National Development survey, 90.7 per cent of the non-poor in rural areas lived in owner-occupied housing, while 5.3 per cent of the non-poor and 2.1 per cent of the poor lived in rented dwelling units. In urban areas, 14.5 per cent of the non-poor and 21.0 per cent of the poor lived in owner-occupied housing, while 68.5 per cent of the non-poor and 68.8 per cent of the poor lived in rented dwellings. As the economy continues to experience hardships, and as more people migrate to towns, housing problems will continue to increase.

23. The Government has continued to invest in the development of sports infrastructure. This investment is aimed at the development of youth character, health and values that strengthen teamwork and national pride. As a result of past government support for sports, Kenya has become a regional and international power in various sports.

4. Situation with regard to poverty

24. The 1994 Welfare Monitoring Survey (WMS II) established monthly food and overall poverty lines in rural areas at K Sh 702 and K Sh 978, respectively. The corresponding figures for urban areas were established at K Sh 875 and K Sh 1,490, respectively. The two lines identified 47 per cent of the rural population and 29 per cent of the urban population as food poor. As shown in figure 1, the proportion of the rural population falling below the poverty line between 1992 and 1994 has not changed much. However, the data show that the prevalence of poverty in the Coast and Eastern Provinces has deepened, while it has eased for other provinces. The comparison should, however, be read with caution, because different methods were used to collect poverty data for the three periods.

Figure 1. Overall poverty in rural Kenya, 1982, 1992 and 1994, by province



Note: North Eastern Province was not covered in the 1982 and 1992 WMS.

Source: Economic Survey, 1997.

25. The prevalence of overall poverty was highest in North Eastern Province with 58 per cent, followed by Eastern Province with 57.75 per cent and Coast Province with 55.63 per cent. The districts with more than 60 per cent of their population below the overall poverty line were Marsabit, Samburu, Isiolo, Makueni, Turkana, Tana River, Machakos, Mandera, Kilifi and Embu.

26. The 1996 Participatory Poverty Assessment (PPA) revealed that out of the 1,412 household heads interviewed, 55.4 per cent ranked their families as poor, 41.7 per cent as very poor and only 2.9 per cent considered themselves to be rich. Overall, only 8 per cent of respondents reported a significant poverty reduction in the previous five years. About 76.7 per cent of the households interviewed (PPAII) indicated that they had become poorer in the last five years.

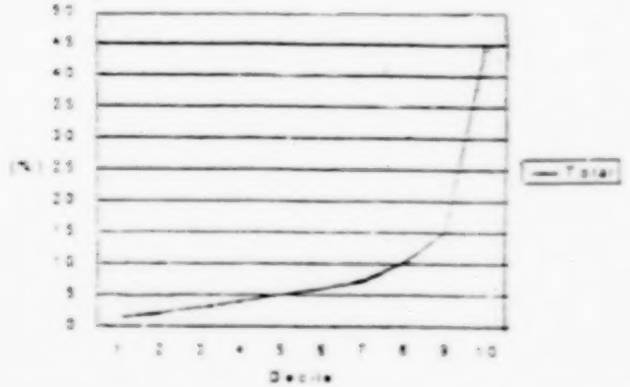
27. A shown in table 2, the distribution of income in Kenya is very skewed. Using expenditure data as proxy for income, the bottom 20 per cent of the population in rural Kenya expend only 3.5 per cent of total expenditure. At the other extreme, the top 20 per cent of the rural population controlled 60.5 per cent of total expenditure recorded in rural areas. All the rural provinces showed almost similar expenditure patterns (see figure 2).

Table 2. Expenditures in rural Kenya by decile and province, 1994

Decile	Coast	Eastern	Central	Rift Valley	Nyanza	Western	Total
1	1.5	1.5	1.5	1.0	1.4	1.7	1.3
2	2.5	2.9	2.4	1.6	2.0	2.6	2.2
3	3.4	3.8	3.4	2.6	2.7	3.7	3.1
4	4.7	4.2	4.0	3.3	3.9	4.6	4.0
5	4.4	6.0	5.0	4.6	5.3	6.0	5.2
6	5.5	6.3	6.0	5.2	6.1	7.7	6.1
7	7.3	8.0	7.4	7.3	8.0	9.0	7.4
8	11.1	9.8	11.1	10.6	8.9	10.4	10.2
9	14.6	15.6	14.9	15.4	14.8	14.5	15.2
10	45.0	41.8	44.1	48.5	47.0	39.9	45.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Welfare Monitoring Survey 11 (WMSII), 1994

Figure 2. Expenditure in rural Kenya by decile in 1994



28. Children of the most vulnerable groups, including urban slum-dwellers, the disabled, people in the arid and semi-arid lands and female-headed households, are the most affected by poverty. The 1994 PPA survey showed that a third of the rural households are female headed; as many as 60 per cent of these have no male support. Given that the bulk of the poor live in rural areas, the incidence of severe poverty is significantly higher for such households. Of the households investigated 44.1 per cent of female-headed households were classified as very poor, compared to only 20.8 per cent of male-headed households.

5. Causes of poverty

29. The causes of poverty in Kenya include:

Lack of access to factors of production;

Sluggish economic growth;

Large families and rapid population growth;

Lack of productive skills and low levels of education and training;

Bureaucratic planning, targeting and resource allocation mechanisms that limit the capacity of the poor to get help;

Inequitable income distribution;

Ill-health, the incidence of AIDS and other disabilities;

Changes in social structures leading to breakdown of families and support systems.

30. Various groups including the Government, donor agencies, NGOs, religious organizations and local communities have taken up the fight against poverty on the basis of partnership. In its Poverty Eradication Plan, the Government has adopted a multifaceted framework for poverty reduction that includes:

Creating a macroeconomic framework that is conducive to growth;

Targeting the vulnerable groups through social dimensions of development;

Expanded provision of infrastructure;

Rural-urban balance;

The conservation of natural resources;

Creation of employment.

6. The labour force

31. The economically active population is composed of those employed, self-employed and unemployed. This population is important because it is a reservoir of the human capital required to produce economic goods and services. As a result of the high population growth rates of between 3.0 per cent and 3.8 per cent during the 1970s, the total labour force is estimated to have increased from 10.7 million in 1992 to 12.5 million in 1996.

7. Employment in the modern sector

32. The employment data for Kenya can be classified under three sectors: the modern or formal sector, the informal sector and rural small-scale agriculture. The growth in employment in the modern sector (which includes the entire public sector and all the incorporated enterprises within the private sector) of the Kenyan economy has been slow. This is due to the ongoing public sector reforms, the poor performance of the economy in the recent past, and inflexible labour market policies. As shown in table 3, total employment in the sector rose marginally from 1.5 million persons in 1992 to 1.7 million persons in 1996.

Table 3. Sectoral distribution of employment 1992-1996 ('000s)

Sector	1992	1993	1994	1995	1996
Modern sector					
Wage sector	1 462.2	1 475.5	1 505.5	1 557.0	1 606.8
Non-wage sector	53.8	56.2	58.3	61.1	63.2
Informal sector	1 237.5	1 466.5	1 792.4	2 240.5	2 643.8
Small-scale agriculture*	5 900.8	5 990.3	6 046.8	6 173.5	6 199.9
Total employment	8 654.2	8 988.5	9 403.0	10 032.1	10 513.7
Potential labour force (ages 15-64)**	10 748	11 187	11 634	12 084	12 532
Unemployment rate (%)	19.5	19.7	19.2	17.0	16.7

* Estimates based on the 1988/89 Rural Labour Force Survey.

** Estimates based on the population projection presented in Volume VII of Kenya Population Census 1989, but adjusted by 0.15 correction factor.

Source: Economic Survey 1997.

8. Employment in the informal sector

33. The ongoing structural changes in the domestic economy have resulted in significant changes in the labour market. Among the changes has been a significant shift of surplus labour to the informal sector. This is reflected in the steady expansion of the sector in recent years: the number of persons engaged increased from 1.2 million to 2.6 million in 1996. The notable employment creation potential of the sector results from a number of factors, including the multiplicity of informal sector activities, the use of simple and inexpensive technologies demanding less specialized skills, ease of entry into and exit from the sector, and small capital investment. Other factors include the absence of registration and other legal formalities, and a gradual shift of labour from subsistence farming to the informal sector as the economy increasingly becomes market oriented.

34. The Government has set up a department in the Office of the Vice-President and Ministry of Planning and National Development to promote the small-scale and Jua Kali sector. Its activities include training on the use of appropriate technology, credit management, basic bookkeeping and marketing. Several credit schemes have been set up through the department. There is also collaboration between the Government, the private sector, NGOs and the donor community to promote this sector.

35. Despite these efforts, the full potential of the sector has not been realized, largely because of constraints in funding. There is, therefore, a real need to consider alternative avenues of promoting this sector.

9. Employment in small-scale agriculture

36. Small-scale agriculture and pastoralist activities include crop production and animal husbandry in rural areas. These are produced either for the market or for home consumption. The Labour Force Survey estimates show that employment in this sector rose from 5.9 million persons in 1992 to 6.2 million persons in 1996. However, the sector's share of total employment declined from 68.2 per cent in 1992 to 59.0 per cent in 1996. This resulted from a significant shift from rural small-scale farming activities to the informal sector. This was mainly caused by the increasing market orientation of the economy, intensified population pressure on arable land, and the ease of entry into and exit from the informal sector. The sector is dominated by rural women and is their main source of income.

10. Child labour

37. Child labour refers to working children who earn a living for themselves and their families, and who may forego the opportunity to attend school. Such work may expose the child to physical, intellectual and emotional damage, which affects their future development. The 1989 Population Census found 896,569 children (30.1 per cent of children aged between 10 and 15 years) to be economically active. These results indicate a high presence of child labour, given that children below 10 years were not asked about their status in the labour force. Although there are no comprehensive statistics on child labour, the number of working children is estimated to have increased to 3-4 million by 1998.

38. Studies and research conducted on child labour indicate that child labour is related to poverty, lack of schooling and illiteracy. Children work in violation of national and international laws. Many of them work under hardship conditions. This has serious negative consequences on their health, education and normal development. There are, however, efforts to eliminate child labour. These are spearheaded by the Government in collaboration with other active partners such as the International Labour Organization (ILO) through the International Programme for the Elimination of Child Labour (IPEC).

11. Unemployment

39. The 1986 Urban Labour Force Survey established that the overall rate of urban unemployment of 16.2 per cent was slightly higher than developed world standards, but lower than the rate of urban unemployment in most African countries. Further, the 1988/89 Rural Labour Force Survey showed low levels of unemployment in rural areas compared to urban areas. The two surveys found that the participation rate of females in the labour force had increased. The low levels of unemployment in the rural areas is a reflection of correspondingly high levels of underemployment among the youth, especially in family-owned enterprises such as farms.

D. Sociocultural perspectives

1. Cultural diversity

40. Kenya has over 40 predominantly African indigenous cultural ethnic groups. These account for about 99 per cent of the population. The groups are located across 67 administrative districts, whose boundaries are largely co-terminus with ethnic boundaries. Kenyans thus display diverse cultures in terms of language and social organization. They are further divided into clans and families based on blood relationships. They maintain a variety of traditional cultural beliefs and practices. These influence the lives of children.

41. The diverse cultural characteristics influence the way people perceive and respond to the world around them, the way in which they relate to others and interact amongst themselves, and their modes of livelihood. Key influences on cultural change are patterns of migration and urbanization, education change, economic development and the growing influence of globalization.

2. Impact of sociocultural beliefs and practices

42. Certain cultural beliefs have had a negative influence on the lives and welfare of children. The size of families is to a great extent influenced by culture, because children are considered to be a blessing and security for parents in old age. This in turn influences community attitudes towards family planning, and consequently infringes on the right of children to adequate nutrition which is affected by large families. Certain beliefs and practices infringe on the girl child's sexual and reproductive rights and bodily integrity as provided in the Convention on the Elimination of All Forms of Discrimination against Women. These include practices and beliefs which touch on coitus, initiation rituals and early marriage. In addition, gender bias in the provision of education for girls is deeply rooted in culture and tradition. This infringes on girls' rights to development. It denies them education and health. This affects their career and denies them the opportunity to participate in decision-making at every level.

43. The traditional family set-up consisted of both the nuclear family and the extended family. These family structures played a very important role in a child's socialization. Through these systems, children acquired very positive values to assist them as they grew up to become responsible adults. In the traditional set-up, orphans were taken very good care of by the members of the extended family and there were no incidents of homeless children. The break-up of this family system led to street children, orphans, child-headed households and homeless children.

44. Traditionally, there were many rites associated with growing up which were very important to the child's moral growth. For example, during initiation, when one was officially initiated into adulthood, a lot of values were taught and the most important lessons touched on responsible parenthood and moral uprightness.

45. However, some cultural practices have proved to be negative, such as early marriage of girls, female (girl) circumcision and preference of boys over girls, which led to poor development of the girl child.

II. GENERAL MEASURES OF IMPLEMENTATION: ARTICLES 4, 42 AND 44

A. Implementation of rights

46. The Constitution of Kenya does not specify the methods for transforming international treaties into municipal law. Kenya's practice follows the English one whereby for a treaty to apply, Parliament must pass an enabling Act to give effect to it. Soon after Kenya's ratification of the Convention on the Rights of the Child on 30 July 1990, the Attorney-General directed the Kenya Law Reform Commission to review the existing laws concerning the welfare of children and make recommendations for improvement so as to give effect to the Convention.

47. Although the Commission had, as far back as 1984, embarked upon a review of laws relating to children, the process was hastened by Kenya's ratification of the Convention. The Commission set up a multisectoral and multidisciplinary task force including government officers, children's rights advocates, experts and representatives of key child welfare organizations, and academicians. A team of 13 persons was constituted. They began work in March 1991.

48. The result of the consultative process was a report submitted to the Government in May 1994. One of the key recommendations was the enactment of a Children Bill and the amendment of other relevant statutes not codified under this bill. A Cabinet decision soon thereafter led to the publication of the Children Bill (1995). The objects of the Bill as set out in section 3 were to:

Promote the well-being of children;

Implement the provisions of the Convention;

Promote the welfare of the family;

Assist parents in the discharge of their parental responsibilities;

Establish and promote the use of services and facilities within the community designed to advance the well-being of children.

49. The Bill was tabled in Parliament soon after its publication. It went through the first reading. It did not go beyond the second reading because Parliament recessed.

50. There was dissatisfaction, particularly from NGOs which considered that the Bill fell short of the provisions and spirit of the Convention. They cited anomalies including:

Lack of sensitivity to religious concerns;

Lack of provisions on social security, free and compulsory education, refugee and displaced children;

The problems of children with disabilities and those accompanying mothers to jail;

Protection of the girl child from a variety of disadvantages.

51. There was the general criticism that the Bill was not progressive and failed to implement the provisions of the Convention on the Rights of the Child in a meaningful way. There were suggestions on revising the Bill to make it more child friendly and to provide a legal and institutional framework that would enhance protection of all children inside and outside the family environment.

52. After consultations with the various interest groups, including NGOs, the Attorney-General directed the task force to review the Bill. A new bill has since been drafted for consideration and is soon to be tabled in Parliament.

B. Article 42. Implementation and entry into force

53. The Government participated in the World Summit for Children in 1990 and ratified the Convention on the Rights of the Child in July 1990. By October 1992 Kenya had published its National Programme of Action for Children (NPAC) for implementation of the 1990 World Summit Declaration. The NPAC outlines goals and strategies needed to respond effectively to the goals agreed on at the Summit. The NPAC is implemented within government structures and by NGOs. On the basis of the NPAC, development plans and policy documents have been developed on issues relating to children. On the same basis the Government of Kenya, in collaboration with donors, notably UNICEF, has since 1990 developed country programmes for ensuring implementation of the Summit goals. So far, two five-year programmes, 1990-1993 and 1994-1998, have been implemented and implementation of a third country programme (1999-2003) for children is ongoing (see table 4).

Table 4. Trend in goals set in the Kenya National Plan of Action for Children

	World Summit goals for 2000	Kenya's NPA goals	1990 levels	Current status
1.	A ⅓ reduction in 1990 U5MR (or to 70/1,000 live births, whichever is less)	Reduce IMR and U5MR to 70/1,000 and 90/1,000 respectively, with particular attention to the AIDS epidemic	U5MR - 75/1,000 (1991) IMR - 52/1,000 (1991)	U5MR - 112/1,000 (1998) IMR - 74/1,000 (1998)
2.	A halving of 1990 MMR	Determine and reduce current MMR	MMR - 150-300/100,000	MMR - 365-498/100,000
3.	A halving of 1990 rates of malnutrition among the world's under-5s (to include the elimination of micronutrient deficiencies, support for breastfeeding by all maternity units, and a reduction in the incidence of low birth weight to less than 10%)	Reduce moderate malnutrition by 30% of its 1992 level. Give special attention to the nutrition of the girl child, pregnant and lactating mothers. Eliminate IDD and VAD.	Stunting - 32% Wasting - 4%	Stunting - 34% (1994) Wasting - 8% (1994)

	World Summit goals for 2000	Kenya's NPA goals	1990 levels	Current status
4.	The achievement of 90% immunization among under-1s, the eradication of polio, the elimination of neonatal tetanus, a 90% reduction in measles cases, a 95% reduction in measles deaths (compared to pre-immunization levels)	The achievement of 90% immunization coverage; a virtual elimination of polio	51% fully immunized (1987)	76% (1994)
5.	A halving of child deaths caused by diarrhoeal disease	Establish adequate data on diarrhoea mortality and incidence rates in order to set goals	Data not available	Data on diarrhoea mortality not available
6.	A ⅓ reduction in child deaths from ARIs	Reduce ARI mortality rates by 10% of their 1993 levels	30.2% (1993)	Data not available
7.	Basic education for all children and completion of primary education by at least 80% - girls as well as boys	Increase pre-school participation to 50% nationally. Achieve universal access to primary school education in every district; reduce adult illiteracy by 50%. Increase the participation of girls in education	GER in pre-school - 35.4% (1990); GER in primary school - 91.1% (1990)	GER in pre-primary school - 36% (1996) GER in primary school - 76% (1996)
8.	Clean water and safe sanitation for all communities	Provide access to a source of safe drinking water within 1-5 km. Achieve universal access to sanitary means of excreta disposal	Access to safe drinking water - 45%. Access to adequate environmental sanitation - 80%	48% 46% (1996)
9.	Acceptance in all countries of the Convention on the Rights of the Child, including improved protection for children in especially difficult circumstances	Enact a comprehensive Children's Act to protect the rights of the child. Create effective institutions to implement child law and assist children in especially difficult circumstances	Children and Young Persons Act Adoption Act Guardianship of Infants Act	Children Bill published to be presented to Parliament
10.	Universal access to high-quality family planning information and services in order to prevent pregnancies that are too early, too closely spaced or too numerous	Design more gender-sensitive development programmes which recognize women's productive and reproductive roles	Data not available	Gender policy drafted
11.	Alleviate poverty and revitalize economic growth	Reduce incidence of poverty at household level by 50%	45% (1992)	43.5% (1996)

Source: National Plan of Action for Children in the1990s, various government surveys and analytical reports.

54. There has been no effective coordination mechanism for the implementation of the Convention on the Rights of the Child. However, in 1997 a technical Steering Committee was established under the chairmanship of the Director of Children's Services. The Committee drew its membership from relevant ministries and lead children's NGOs and has been responsible for the compilation of this report.

55. It is envisaged that the responsibilities for reporting on the Convention on the Rights of the Child will continue under the auspices of the Children's Department. This is the central government department charged with the rehabilitation, protection and care of children under the Children and Young Persons Act (Cap. 141, Law of Kenya). It also undertakes specific child-related activities in liaison with NGOs, donors and other agencies.

56. The District Children's Advisory Committees were established in 1992. These committees are chaired by District Commissioners and are responsible for coordinating all children's activities in the districts.

57. There are measures to collect data on children on aspects such as immunization, education, birth registration and nutrition. But no specific measures have so far been planned to ensure the systematic gathering of data on children relating to other rights. However, the Government of Kenya, through the Ministry of Planning and National Development and with the support of UNICEF, has carried out situation analyses of children in Kenya (1992 and 1997). The two documents present a collaborative effort of Government, NGOs, UNICEF, professional groups and civil society. Among other things, these analyses deal with: children in need of special protection, basic education, health and nutrition, water and environmental sanitation, gender, and HIV/AIDS. The analyses emphasize disparities based on socio-economic factors, regions, gender and age. The 1997 Situation Analysis used a rights-based framework and forms the basis of the 1999-2003 GOK/UNICEF Programme of Cooperation.

58. The Government also conducted three welfare monitoring surveys (WMS) in 1992, 1994 and 1997. These cover health, nutrition, education, water and sanitation, among other subjects. In addition, two demographic and health surveys (KDHS) have been conducted (1993 and 1998). A survey on children in especially difficult circumstances (CEDC) was carried out in 1997 in 13 districts. It was to gather data on the causes and magnitude of the problem.

59. A number of NGOs have individually collected data on issues such as child labour, street children, children and criminal justice, child prostitution, child abuse, the girl child, teenage pregnancy and school drop-out. These surveys are, however, based on small samples.

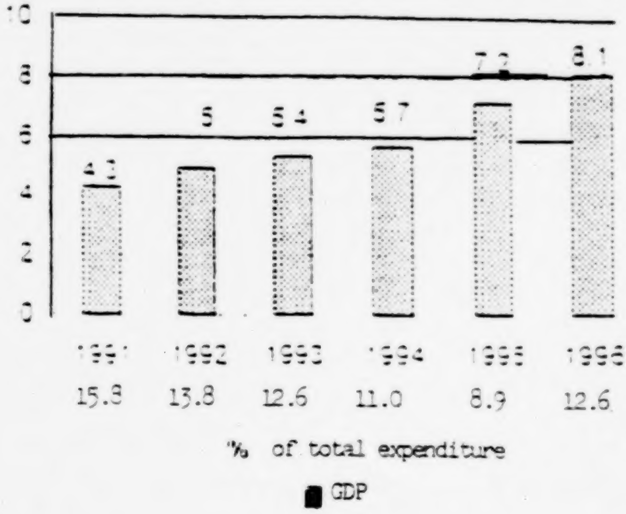
60. Children's issues in Kenya are funded jointly by the Government, the donor community and various NGOs. While there is no breakdown of the national budget by children's programmes and activities, an attempt has been made to estimate the proportion of the budget allocated to social services which ensure the survival and development of children. Funding for basic social services has, however, remained very low and has had adverse effects on the realization of the NPAC goals (see table 5). This is indicated by the resource allocation in the financial year 1990/91-1995/96 as shown in figure 3.

Table 5: Real government expenditures on basic social services (BSS), 1990-1995

Social sectors	1990	1991	1992	1993	1994	1995
Basic health care expenditure as % of real GDP	0.4	0.5	0.6	0.6	0.7	0.8
Basic health services as % of government budget	1.4	1.4	1.3	1.2	0.9	1.3
MOH nutrition services as % of GDP	0.01	0.01	0.01	0.01	0.01	0.0
MOH nutrition services as % of government budget	0.03	0.03	0.02	0.02	0.01	0.0
Reproductive health and family planning services as a % of GDP	0.1	0.1	0.1	0.1	0.0	0.1
Reproductive health and family planning services as a % of GOK budget	0.3	0.3	0.3	0.3	0.3	0.3
Water and sanitation services as a % of GDP	0.5	0.5	0.3	0.3	0.2	0.3
Water and sanitation services as a % of government budget	2.0	1.4	0.7	0.6	0.3	0.4
Basic education as a % of real GDP	3.3	3.9	4.5	4.7	6.2	6.8
Basic education as a % of government budget	12.1	10.6	10.3	8.9	7.7	10.6
All BSS as a % of GDP	4.3	5.0	5.4	5.7	7.2	8.1
All BSS as a % of government budget	15.8	13.8	12.6	11.0	8.9	12.6
Total government expenditure	4 223.7	4 311.5	4 332.2	4 343.3	4 474.4	4 692.7

Source: BSS report 20/20 compact study.

Figure 3. All basic social services (BSS) as a % of government budget



61. In the national health budget, most children's activities are funded through the Preventive and Promotive Health Vote. This vote has various sub-items: maternal and child health (MCH), control of diarrhoeal disease (CDD), acute respiratory infections (ARI), expanded programme of immunization (EPI), safe motherhood and baby-friendly initiative and malaria control. There is also a sub-vote on nutrition with such sub-items as micronutrients deficiency control and vitamin A deficiency.

62. In education, the bulk of the budget goes to children through primary and secondary education. The budget also has such specific sub-items as the School Feeding Programme, Boarding Schools for Arid and Semi-Arid Areas, and Pre-Primary Education. Although education takes 30 per cent of the national budget, 80 per cent of the education budget goes to teachers' salaries. The remaining 20 per cent is not nearly enough to fund primary education, and hence the policy of cost-sharing.

63. The Children's Department is under financed, representing less than 1 per cent of the total national budget. This impacts negatively on the Department's ability to discharge its responsibilities.

64. Children have been severely affected by the economic crisis facing the country. Since the 1990s, the emphasis has been on reducing government expenditure on social services and transferring the responsibilities either to users or communities. In the face of the increasing incidence of poverty, this has meant decline in access to social services such as education, health, nutrition, water, sanitation and security. For example, the primary school gross enrolment rates have declined from a high of 95 per cent in the late 1980s to about 76 per cent currently. In health there has been a notable decline in infant and under-5 mortality rates in the 1990s and recent studies show that these are increasing.

65. The Government is concerned about these trends and has set up programmes to respond to this. Such programmes include the Social Dimensions of Development (SDD) and the Anti-Poverty Trust Fund. The Government has also developed a Poverty Eradication Plan. The SDD programme has been conceived as an umbrella programme to address the needs of the poor and vulnerable. Its main objectives are to:

(a) Sharpen the focus and enhance the priority accorded to poverty reduction in Kenya's overall development strategy;

(b) Facilitate the mobilization and channelling of adequate resources to the poor and the vulnerable; and

(c) Improve the targeting, efficiency and effectiveness of resource flows and delivery of goods and services to this group.

66. As the incidence of poverty and its intensity are most severe for women, the SDD programme gives special attention to their needs, priorities and aspirations. Activities under this programme include:

Burseries for poor students;

Supply of school textbooks;

School milk and feeding programmes;

Supply of school equipment;

Supply of drugs and other material for health services;

Maintenance of roads and water projects in rural areas;

Settlement of the landless;

Sites and services improvements for housing for the urban poor;

Promotion of rural industries;

Development of programmes for informal enterprises to generate employment;

Severance payments for those retrenched under the Civil Service Reform Programme.

67. Budgetary allocations to selected narrowly targeted SDD programmes and projects have been K Sh 3.2 billion in 1994/95, K Sh 4.8 billion in 1995/96 and K Sh 7.6 billion in 1996/97. Additional amounts were allocated in the budget for selected broadly targeted SDD interventions amounting to K Sh 2.6 billion in 1995/96 and 4.8 billion in 1996/1997. The Government is prepared to earmark resources for the establishment and operation of the Anti-Poverty Trust Fund.

68. Apart from the government allocation, BSS are also funded through overseas development assistance (ODA). Its expenditure on BSS as a proportion of total ODA has averaged 15 per cent over the period 1989 to 1995, with a notable 23 per cent in 1994. In terms of sectors, expenditure on basic health as a proportion of total ODA expenditure has been rising from almost 4 per cent in 1989 to a projected 12 per cent in 1995. As table 6 shows, nutrition has also recorded a growing trend of allocation of ODA and stood at almost 10 per cent in 1994.

Table 6. Overseas development assistance (ODA) allocation for BSS (in thousands US$ and % shares)

Sectoral allocations	1990	1991	1992	1993	1994	1995
Primary health care	19 538	26 188	10 130	7 643	10 075	9 351
Immunization and other diseases	6 214	8 421	1 657	2 684	2 827	1 170
Area development: health activities	13 972	6 905	5 644	6 083	6 033	3 901
Reproductive health and Family Planning	17 676	19 536	14 785	9 259	10 426	6 251
Total basic health	57 400	61 050	32 216	25 669	29 361	16 772
Primary schooling	10 461	7 697	7 290	1 888	8 395	3 998
Non-formal education	1 536	11 277	3 712	4 385	6 132	1 552
Area development educational activities	13 972	6 905	5 644	6 083	6 033	3 901
Total basic education	25 969	25 879	16 646	12 356	14 527	5 550
Food crops	25 667	12 766	6 735	7 405	50 409	0
Total nutrition	25 667	12 766	6 735	7 405	50 409	0
Drinking water and sanitation	51 466	47 538	12 870	5 870	19 885	1 950
Area development: water activities	13 972	6 905	5 644	6 083	6 033	3 901
Total water supply services	65 438	54 443	18 514	11 953	25 918	5 851
Early warning and food information	0	0	0	1 551	618	1 974
Relief planning	50	0	0	0	2 719	0
Emergency relief	4 234	4 411	44 260	72 890	30 640	5 083
Total expenditure on BSS	204 425	171 315	125 106	139 229	204 601	35 230

Sectoral allocations	1990	1991	1992	1993	1994	1995
Grand total of grants and ODA	1 420 241	853 933	982 448	934 162	520 794	140 125
Total basic health (%)	4.04	7.15	3.28	2.75	5.64	1 197
Total basic education (%)	1.83	3.03	1.69	1.32	2.76	3.96
Total nutrition (%)	1.81	1.49	0.69	0.79	9.68	0.00
Total water supply services (%)	4.61	6.38	1.88	1.28	4.98	4.18
Total other BSS (%)	0.0	0.01	0.05	0.08	0.07	0.05
BSS as % of total expenditure	12.29	18.06	7.59	6.22	23.15	20.16

Source: UNDP Annual Development Cooperation Reports 1990 and 1994 (1995 figures are provisional).

69. Grant aid currently accounts for less than 2 per cent of GDP. The withholding of ODA is already causing concern, given that ODA supports most of the development activities related to BSS.

70. Overall disbursements from bilateral donors decreased between 1991 and 1994 as shown in table 7. Despite their large number and activities, NGOs contribute a very small percentage of the total ODA. However, it is important to note that their activities are concentrated in the provision of social services and therefore their contribution to ODA is very important.

Table 7. Overseas development assistance (ODA) by type of donor (in millions of US$)

Donor	1990	1991	1992	1993	1994	1995
United Nations system	523.92	294.52	361.79	372.65	161.47	24.75
Non-United Nations system	109.24	13.42	25.30	17.60	0.00	0.15
European Union	96.14	36.20	140.37	83.63	64.75	208.88
Bilateral	772.51	485.20	438.78	443.45	281.30	90.12
NGOs	16.75	24.59	16.21	16.82	13.29	4.19
Total ODA	1 420.24	853.93	982.45	934.00	520.80	140.11
Percentages						
United Nations system	36.90	34.50	36.80	39.90	31.00	17.70
Non-United Nations system	6.80	4.20	14.30	9.00	12.40	14.90
European Union	0.80	1.60	2.60	1.90	0.00	0.10
Bilateral	54.40	56.80	44.70	47.50	54.00	64.30
NGOs	1.20	2.90	1.60	1.80	2.60	3.00
Total ODA	100.00	100.00	100.00	100.00	100.00	100.00

Source: UNDP Annual Development Cooperation Reports 1990 and 1994 (1995 figures are provisional).

71. Pursuant to article 42 of the Convention, Kenya has made the principles and provisions of the Convention widely known to both children and adults. In particular, the weekly Child Survival radio programme has developed and aired radio programmes on the rights of the child. Although these have mainly been in English, a few have been aired in Kiswahili and in local languages. In the daily newspapers, feature articles on thematic issues of child rights have been published. The two main dailies, the Daily Nation and the East African Standard, have a weekly pullout section for children.

72. Activities such as the Day of the African Child and Universal Children's Day are used to create public awareness using drama, song and poems by children, and speeches by child specialists. They are each marked once a year, in June and November respectively. They are coordinated by the Ministry of Home Affairs, National Heritage, Culture and Social Services in collaboration with NGOs and UNICEF. Supplementary articles are published in the main dailies. Radio programmes are also broadcast countrywide to coincide with these days.

73. To promote the Convention on the Rights of the Child and to ensure that children know their rights, children rights clubs have been piloted in schools by two organizations, Kenya Alliance for the Advancement of Children (KAACR) and Child Welfare Society of Kenya (CWSK). The objectives of these clubs are to:

(a) Promote awareness of children's rights and responsibilities;

(b) Encourage tolerance of different opinions, freedom of expression and respect for the law;

(c) Promote the artistic talents of children through drama, songs, essays and art;

(d) Promote sensitivity to environmental, social and development issues that affect children.

74. KAACR has published 5,000 copies of manuals for facilitators of Child Rights Clubs. Club facilitators can use these to make child rights relevant to children's everyday lives. Three thousand brochures have been produced. They contain information on the activities of Child Rights Clubs.

75. The Christian Children's Fund (CCF) has translated the Convention into Kiswahili, the national language. To date over 20,000 copies have been published and distributed in over 53 CCF projects, 95 per cent of which are based in rural areas. Through District Children Advisory Committees, KAACR has published a simplified version of the Convention for child readers. To date over 20,000 copies have been distributed through its network of agencies, mainly scattered in Nyanza, Nairobi, Western and Coast Provinces.

76. Regular annual and biannual publications by NGOs on child rights which also solicit views from children include:

> The "Voice" by the Child Welfare Society (distributed through its 15 branches in the country);

"Binti" by the Girl Child Network (distributed through its 52-member NGO network);

"The Child" by KAAC (distributed in its programme areas in Nairobi, Kisumu, Western and Coast Provinces;

"Voices" by the Kenya Human Rights Foundation and "Sera Zetu" by Action Aid are distributed mainly in Nairobi;

The Government and UNICEF have produced two posters on child rights. The first is a general poster on survival, development, protection and participation of the child. The second is a series of posters on thematic issues affecting children such as health, education and water. These are distributed in UNICEF's 19 focus districts, through line ministries and partner NGOs.

77. Sensitization on child rights and the provisions of the Convention on the Rights of the Child has been carried out at different times with a focus on specific categories of citizens. During the drafting of the Children Bill, judicial personnel and politicians were the main focus. At the beginning of the Convention reporting process, officers of the main line ministries were trained on the Convention on the Rights of the Child.

78. NGOs that have held sensitization workshops on child rights include: the Child Welfare Society of Kenya, Save the Children Canada, Netherlands Development Organization, Action Aid Kenya, Christian Children's Fund, Kenya Alliance for the Advancement of Children, African Network for Protection and Prevention against Child Abuse and Neglect, and the Pandipieri Street Children Programme based in Kisumu. Those sensitized in these workshops include police officers, social workers, the local administration, primary and secondary schoolteachers, and boys and girls in and out of school.

C. Article 44. Reports

79. The Convention reporting process began in April 1997 under the technical Steering Committee. The committee was coordinated by the Children's Department which worked with UNICEF and the NGO community through KAACR to facilitate the process.

80. KAACR and the Children's Department provided a secretariat and worked with the Steering Committee in sensitizing other Government Departments, NGOs, CBOs and children in all eight provinces of Kenya on the Convention on the Rights of the Child. They also obtained information on the status of implementation of the Convention. Apart from adults' workshops, which were attended by 450 participants, children's workshops were held in which 350 children expressed their views on the Convention and its implementation in Kenya. Reports from these workshops have been used in compiling the national report. KAACR also undertook a desk survey on the status of implementation.

81. UNICEF provided financial support to the project by funding workshops in Nairobi, Nyanza, Coast, Rift Valley and North Eastern Provinces. It also cosponsored the Central Province workshop with Plan International. Workshops in the other provinces were

co-sponsored by Action Aid Kenya, Plan International, Save the Children Canada, Care Kenya, ILO/IPEC, Young Muslim Association, SNV Netherlands and the Children's Department. The Steering Committee then set up an inter-ministerial and multidisciplinary team of 31 drafters from Government, NGOs and the Attorney-General's chambers. The drafters initially worked on the report from their offices, using reports from the provincial workshops. Thereafter, they retreated for a nine-day workshop to finalize it. The draft report was then discussed at a national workshop where stakeholders were invited to give their comments for incorporation in the report. This report was discussed at a national publicity workshop involving 150 NGOs, CBOs, Government and children, before being submitted by the Government to the CRC. One thousand and fifteen stakeholders were consulted throughout the country, of whom 350 were children. The reporting process also received wide coverage in the print and electronic media.

82. We acknowledge the delay in the submission of this report, which was occasioned by the lack of a reporting mechanism immediately after ratification of the Convention.

III. DEFINITION OF THE CHILD: ARTICLE 1

A. Constitutional and legal context

83. The Constitution of Kenya (sect. 82) allows different personal laws on adoption, marriage, divorce, burial, devolution of property and related matters. The effect of this is to allow the different definitions of a child in these laws. The Constitution does not, however, define childhood, and makes no reference to children. However, several statutes provide various definitions of a child and childhood.

84. According to the Age of Majority Act (Cap. 33, Laws of Kenya), full legal capacity is acquired at the age of 18 years. Persons below this age are minors. They may not enter into commercial legal contracts. The Children and Young Persons Act (Cap. 141, Laws of Kenya) defines a "child" as a person under the age of 14. A "juvenile" is one aged over 14 years, but is under the age of 16. A "young person" is one aged 16 or more, but is under the age of 18.

85. The Children Bill (1998) creates a uniform definition. It defines "children" as persons under the age of 18. It also provides for various stages of childhood. Under the Penal Code (Cap. 63, Laws of Kenya), the definition of a child includes the unborn child. This is so because sections 158 and 159 prohibit abortion. The offence of infanticide applies to infants who are persons below 12 months.

86. According to section 14, a person aged below 8 years is incapable of forming criminal intent. Kenya's criminal law presumes that a girl aged below 14 years cannot consent to sexual intercourse. The law avails to the offender a defence if he reasonably believed that the girl was above 14 years at the time the offence was committed. It is also presumed that a male child below 12 years cannot commit the offence of rape. According to the Penal Code, the death penalty cannot be pronounced against a person below 18 years. Girls under the age of 21 are protected from being procured for immoral purposes. Further, girls under the age of 18 may not be retained for sexual exploitation by a householder.

87. Cases affecting children are heard in special courts (Juvenile Courts). They are given special protection, including protection against publicity. Children below 16 years are protected from association with adults charged or convicted of offences, except when they are charged jointly with such persons. With respect to custody, the Penal Code requires that those under 18 be housed in juvenile remand rather than remand prisons.

88. Under section 2 of the Borstal Institutions Act (Cap. 92, Laws of Kenya) young offenders between 15 and 18 may be committed to a borstal institution.

89. With a few exceptions, parents of those below 18 who are charged with offences are required to attend the hearings. The Act allows for the participation of parents in enforcing the penalties prescribed against such offenders. Under the Prisons Act (Cap. 90, Laws of Kenya), persons aged between 17 and 21 years may be placed in corrective training institutions instead of prisons. This is a protective measure for young offenders. Under the Evidence Act (Cap. 80, Laws of Kenya), the evidence of a "child of tender years" is not admissible unless it is corroborated. There is no particular cut-off age for this purpose. In practice, the courts assess each individual child, and consider the actual age together with other factors such as demeanour and level of maturity.

90. Under the Oaths and Statutory Declarations Act (Cap. 15, Laws of Kenya), "a child of tender years" may give evidence, but not under oath if such a child does not understand the nature of the oath.

91. Under the Traffic Act (Cap. 403, Laws of Kenya), persons under the age of 16 may not be issued with driving licences. With regard to motorcycles, the minimum age for a driving licence is 18. With respect to matatus (public commuter taxis) and motor-omnibuses, a person must be at least 24 years old and must have held a driver's licence for motor cars or commercial vehicles.

92. Under the Liquor Licensing Act (Cap. 121, Laws of Kenya), alcoholic drinks may not be sold to children.

93. For purposes of marriage, several statutes are applicable. The Marriage Act (Cap. 150, Laws of Kenya) sets the minimum age of marriage for girls at 16 years, and 18 years for boys. In both cases, parental consent is required. This applies also to marriage under the Hindu Marriage and Divorce Act (Cap. 157, Laws of Kenya). In Islamic law, a person is free to marry on attainment of puberty. Under customary law, some communities deem a person ready for marriage after he/she undergoes the relevant initiation rites or after puberty.

94. Under the Employment Act (Cap. 226, Laws of Kenya), the minimum age for employment in an industrial undertaking is 16. This restriction does not apply to employees who belong to the same family as the employer - unless the undertaking is dangerous to the life, health or morals of the persons employed. A child under the age of 16 may also be allowed to undertake industrial work if he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya). There is no legal minimum working age in the agricultural and services

sectors, and for domestic work. Kenya ratified ILO Convention No. 138 on Minimum Age for Admission to Employment in 1979. That convention specifies 15 years as the minimum age for employment. The provision is linked to the number of years required for the completion of compulsory education. Under the Regulation of Wages and Conditions of Employment Act (Cap. 229, Laws of Kenya), there is no legal minimum age at which a person may independently bring a matter before a court. In practice, this age is guided by the age of majority, which is 18, and which is the minimum age required for a person to enter into a legal contract. Under the Trade Unions Act (Cap. 233, Laws of Kenya), children below 16 may not participate or be represented in trade unions.

95. The age of consent for a surgical operation in Kenya is 18 years. Before a child undergoes such an operation, the parent or a guardian must give consent. In case the parents are not available, a senior supervising doctor in the health institution must give consent. This also applies to medical/legal counselling.

96. Section 2 of the Adoption Act (Cap. 143, Laws of Kenya) defines an infant as a person under the age of 18 years. This does not include a person under that age who is, or has been married. This implies that marriage confers adult status, irrespective of age. The Guardianship of Infants Act (Cap. 144, Laws of Kenya) has a similar definition. Under the Armed Forces Act (Cap. 199, Laws of Kenya), persons under the age of 18 may only be recruited in the armed forces with the consent of their parents, guardians or the District Commissioner.

B. Context and implementation

97. Kenya has over 40 different ethnic communities. These define children and childhood differently. The definitions depend on how each community marks the transition from childhood into adulthood, through various rites of passage. These occur at different stages, and the ceremonies normally involve age-sets determined by different socio-cultural events. An example is the Bukusu of Western Kenya who perform circumcision ceremonies for boys during even years and at harvest time.

98. Another Kenyan community, the Maasai of Rift Valley Province, circumcise their boys who also have to kill a male lion as a sign of bravery. Initiates have to retreat to special manyatta (houses) to be socialized by older male members of the community. The Maasai youths are referred to as moraan (warriors).

99. To a large extent, these practices still continue for both boys and girls in many Kenyan communities although they have been modified. These rites conferred adulthood status with its attendant duties and responsibilities irrespective of numerical age.

100. The task force appointed to review laws relating to children recommended the amendment of several laws and a uniform definition of a child to be a person under the age of 18 years. This will become law once the Children Bill (1998) is enacted. The task force also recommended amendment of the Employment Act to provide for 18 years as the minimum age for employment.

IV. GENERAL PRINCIPLES OF IMPLEMENTATION: ARTICLES 2, 3, 6 AND 12

A. Article 2. Non-discrimination

1. Constitutional and legal context

101. Section 70 of the Constitution of Kenya guarantees fundamental rights and freedoms to every person in Kenya irrespective of race, religion, sex, tribe, place of origin, political opinion, residence or any other local connection, colour, creed or sex. Consequently, all persons, including children, are equal before the law.

102. Discrimination is prohibited under section 82, which states that no law shall provide for discriminatory practices. "Discriminatory" means treating persons differently on the basis of their race, tribe, place of origin, residence or other local connection, political opinions, colour or creed. However, the Constitution allows choice in matters of adoption, marriage, divorce, burial, devolution of property, or other matters of personal law. The different personal laws of Kenyan communities sometimes lead to discrimination against children. This has been widely criticized.

103. Kenyan statutory law generally reflects the principle of non-discrimination. But certain legislative provisions discriminate on the ground of gender. Different marriage systems and laws prescribe the ages of marriage for the different systems of marriage. These systems are based on religious and cultural distinctions. The Constitution and the Kenya Citizenship Act (Cap. 170, Laws of Kenya) contain provisions which discriminate on the ground of gender. A child whose father is Kenyan automatically becomes a Kenyan citizen regardless of where he or she is born, but a child born outside Kenya to a Kenyan mother and a non-Kenyan father only becomes a Kenyan citizen if he/she applies for citizenship.

2. Context and implementation

104. There are categories of children who face discrimination within and outside the family due to cultural biases. Children born out of wedlock (mainly as a result of teenage pregnancies) are not fully accepted in the mother's home. If the mother later marries a man who is not the biological father of the child, that child may suffer further discrimination in the new home. This practice affects boys more than girls because in traditional inheritance practices, the girl would get married and leave the family. Many cultures still refer to such children in derogatory terms. There is provision for the legitimization of such children under the Legitimacy Act (Cap. 145, Laws of Kenya).

105. In many Kenyan communities children born of incestuous relationships which are criminal are considered taboo children and are discriminated against. In a significant portion of Kenyan society, especially within rural communities, male children are still preferred. This leads to discrimination against girls, especially in the provision of sufficient food and education. The girl child in certain communities is at risk of harmful traditional practices like female circumcision and early marriage.

106. Although the Law of Succession Act (Cap. 160, Laws of Kenya) treats boys and girls equally, Kenya is still basically a patriarchal society. Rights of inheritance are still to a great extent restricted to the male members of the family. This discriminates against female children.

107. Children with disabilities face discrimination both in and outside the family setting. In some communities, such children are considered to be taboo children since disability is associated with bad luck. Such children are commonly given derogatory names, e.g. Maima in Maasai, Kionje in Kikuyu and Kiwete in Kiswahili, to denote their disabilities. In some rural communities, such children may be hidden from the public. This makes it impossible for them to be assessed and assisted. Although both boys and girls with disabilities are affected, the girl child is particularly vulnerable. In the public sphere, the rights of children with disabilities to health and education have not been adequately addressed. The provision of social amenities by the State to disabled children has been inadequate. Only a few special schools have been established to cater for some groups. However:

(a) Accessibility is not considered in construction of buildings;

(b) There is no policy of integration of disabled children in formal schools;

(c) There are few children's homes with appropriate facilities for disabled children.

108. The advent of HIV/AIDS has led to a fast-growing category of children who have been affected either through infection or being orphaned. Such children are often discriminated against. Cases have been reported of such children being neglected and abandoned in health institutions, and being disowned by relatives.

109. With regard to education, children from poor families who cannot afford the cost of education under the formal system are now being forced by circumstances into the non-formal system, which is inferior to the formal system.

3. Achievements and constraints

110. In 1997, the Constitution was amended to include sex as one of the grounds on which discrimination is prohibited. It is expected that this positive development will be reflected in other statutes. However, the Constitution still does not recognize disability as one of the grounds on which discrimination is prohibited. Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1984. That convention and the Convention on the Rights of the Child play a complementary role in addressing discrimination against the girl child. In 1993, the Attorney-General appointed a task force to review laws relating to women. The task force was given the responsibility of reviewing any discriminatory policies, laws, regulations and practices against women. The review was inspired by the need to promote human rights and fundamental freedoms in the political, economic, social, cultural, civil and other fields. The task force is expected to accomplish its work soon.

111. The task force is expected to recommend legislative reforms and the modification or abolition of discriminatory laws and practices. This exercise is expected to benefit the girl child.

112. Another task force was appointed in 1992 to review laws, policies, customs and practices affecting persons with disability. Its report contains extensive recommendations touching on policy, legislation and programmatic action. These recommendations have not yet been implemented. The proposed Children Bill contains extensive provisions on non-discrimination.

B. Article 3. Best interest of the child

1. Constitutional and legal context

113. Although the Constitution is silent on the rights of the child, the principle of the best interest of the child is spelt out in various statutes dealing with children. It is also the principle that guides the conduct of the courts on children's matters.

114. Under the Children and Young Persons Act (Cap. 141, Laws of Kenya), a court dealing with a child must have regard to his/her welfare. Under the Act, child offenders should be imprisoned only as a last resort. If it happens, children should not be kept together with adult offenders.

115. The Guardianship of Infants Act (Cap. 144, Laws of Kenya), recognizes that the welfare of the child is the first and paramount consideration in matters of custody and upbringing. Section 17 requires a court hearing on matters concerning custody or the administration of property belonging to a child to take into account the child's welfare. A court dealing with children should also remove them from undesirable surroundings and ensure provision for their maintenance, education and training.

116. Under the Adoption Act (Cap. 143, Laws of Kenya), adoption orders are based on the underlying principle of the best interest of the child. The Act sets out an elaborate procedure and detailed legal requirements for adoption. Due consideration should be given to the wishes of the child. In such cases, the age and understanding of the child and the ability of the adopter to maintain and educate the child should be taken into account. The court may require the adopter to accept supervision by, and advice from, an adoption society specified by the court, for a period not exceeding two years.

117. Section 12A empowers the court in adoption proceedings to appoint an independent person or body to act as a guardian. The duty of such a person or body is to safeguard the interests of the child before the court.

118. The Matrimonial Causes Act (Cap. 152, Laws of Kenya) empowers the court to make an order in divorce proceedings for custody and maintenance of children of the marriage. Kenyan courts have been systematic in ensuring that the best interest of the child is the guiding principle in all decisions made regarding a child (Situation Analysis, 1997:47).

119. Although the principle of the best interest of the child is easily applicable ion the courts, it has not been extended to policy areas such as development planning and budgetary allocation. This limitation also exists in the family sphere where important activities and decisions affecting the child take place.

2. Context and implementation

120. Kenya's policy framework on children's rights is inadequate both in content and implementation. Development plans and official policy papers merely express the ideals that children should be provided with education, medical care and nutrition. Such documents fail to specify how all Kenyan children will gain access to education, basic health care and nutrition. In reality, most children live in highly vulnerable economic or social conditions. In the face of deteriorating economic conditions, it is difficult to ensure the best interest of the child.

121. Although the Government is committed to free primary education as expounded in various development plans and sectoral policies, it is becoming more difficult to maintain the best interest principle. Programmes such as school feeding, bursary allocation, special education for children with disability, and subsidies to educational services receive low budgetary allocation. This is further compounded by the structural adjustment programmes that have been undertaken more intensively in the 1990s.

122. However, in attempts to ensure the best interest of the child in education despite the declining economic conditions, the Government identifies standards in the provision of school physical facilities and class sizes. The regulations aim at ensuring safety in schools. Boarding facilities are especially encouraged to have clinics or sanatoriums. These are intended to create a learner-friendly environment. At all levels of education, the Government trains teachers and provides them with professional skills. This includes pre-service and in-service training.

123. Nutritional status. One third of Kenyans are exposed to the risk of deficient nutrition. Some drought-prone districts in the Northern and North-Eastern Provinces experience wide fluctuations in malnutrition rates. During drought periods, some district record as high as 50 per cent malnutrition rates. The Government has attempted to improve the situation through school milk and feeding programmes, and by providing relief during emergency periods. These programmes have been implemented in nomadic areas such as:

(a) The total arid areas category - all school-going children in primary and pre-primary schools get lunch daily. Districts included are Moyale, Samburu, Turkana, Isiolo, Mandera, Wajir, Garissa, Tana River and Marsabit;

(b) Semi-arid areas category - feeding is only done in selected pockets of poverty. Districts involved are Bringo, Koibatek, West Pokot, Narok, Kajiado, Mwingi, Mbeere, Laikipia, Kilifi, Kwale and Lamu.

124. Nutrition safety can, however, only be assured by increased and diversified food production; the varieties of foods consumed (which in turn depend on the economic status of the household); the availability of other basic needs services such as health and education; and the gradual change in cultural habits. Hungry and malnourished children who go to school perform poorly and drop out of school.

125. The health sector: The Government is committed to providing comprehensive and community-based care. This includes appropriate health education, provision of proper nutrition, basic sanitary facilities, and maternal and child health care including family planning and immunization. The goal of health care is to reduce morbidity and mortality. However, many families live in remote and inaccessible areas, including urban slums.

126. These families have limited access to essential services like safe water and adequate sanitation. In these circumstances, the rights to survival, development, protection and participation for most children are not assured. In traditional Kenyan society, communities were collectively responsible for the upbringing of children. They ensured the continuity of communities and lineage, and cared for parents in old age. Survival, development and protection activities within society were undertaken collectively by extended families in the best interest of all members, especially children. Changes, particularly modernization, migration and urbanization, which began with colonization have led to the disintegration of the extended family. The new family forms, which include the nuclear family, female- and child-headed households and families headed by grandparents, are vulnerable. They fail to provide for the basic social services of the children. The presence and increasing population of children in need of special protection further indicate this.

C. Article 6. Right to life and maximum survival and development

1. Constitutional and legal context

127. The Constitution guarantees the right to life for all persons in Kenya. It also states that no person shall be deprived of his/her life intentionally, except in the execution of a sentence of a court for a criminal offence under the laws of Kenya.

128. The Penal Code (Cap. 63, Laws of Kenya) forbids the imposition of a death sentence on a child. The right to life is extended to the unborn child by the law which prohibits abortion unless the life of the mother is threatened.

129. A death sentence cannot be passed on a pregnant woman. Such a sentence is replaced by life imprisonment. The Penal Code further creates the offence of infanticide to protect the lives of infants. Murder is a capital offence. Attempted suicide is also an offence. The Penal Code provides further that a person in charge of those who are unable to provide for themselves the necessities of life must provide such necessities; failure to do so is an offence.

2. Context and implementation

130. Kenya is committed to the survival and development of children as stipulated in various government documents such as the NPAC. The Government has established relevant programmes to ensure child survival and development.

131. Under the NPAC, programmes have been formulated and implemented to curb infant mortality and morbidity. There is a comprehensive Maternal and Child Health Programme. Under this programme, neonatal and post-natal care are given to mothers free of charge in all public health facilities. Infant immunization and growth monitoring is routinely carried out. Malnutrition and vitamin deficiency are curbed by the provision of iron, folic acid and vitamin A to pregnant mothers and children. To increase such activities, an outreach component has been added to this programme.

132. Rehabilitative health for children with disabilities is done through the departments of physiotherapy and occupational and orthopaedic therapy in the Ministry of Health. A conscious effort is being made to encourage community-based rehabilitation.

3. Constraints

133. The right to development is greatly compromised by the declining public and family resources. There are regional disparities in the availability of public health facilities and supplies. Even with the outreach programme, children in remote areas of Kenya have not benefited fully from MCH care. The HIV/AIDS scourge has created new challenges in the provision of MCH services. Medical and health-care facilities and supplies are overstretched because of the rising numbers of patients. The available medical personnel cannot cope with the rising demand for services. The rapid population growth and rural-urban migration have escalated poverty and led to the growth of slum dwellings in the cities and other major towns. Slum dwellings lack proper sanitation, safe drinking water and general infrastructure. The congestion in the slums exposes children to constant outbreaks of diseases. Slums are not recognized officially by the Government. As a result, policy on the provision of basic social services and infrastructure is lacking.

134. The economic structural adjustment programmes have had a negative impact on the provision of basic social services. This is threatening to reverse the progress made so far.

D. Article 12. Respect for the views of the child

1. Constitutional and legal context

135. Chapter 5 of the Constitution of Kenya guarantees fundamental rights and freedoms, which include the freedoms of conscience, expression, assembly and association. These rights are guaranteed to all citizens. Although there is no specific mention of children, these provisions also cover them.

136. Section 77 of the Constitution provides due process rights. These require that an accused person be given the protection of the law and a fair hearing by an impartial court, adequate time and facilities to prepare the defence; and an opportunity to mount a defence in court either in person or through a legal representative of choice. Where necessary, an accused person should be provided with the services of an interpreter.

137. The juvenile courts, set up under the Children's and Young Persons Act (Cap. 141, Laws of Kenya) to deal with matters affecting children, follow similar principles. The evidence of a child is admissible but it must be corroborated by other material evidence.

138. Under the Adoption Act (Cap. 143, Laws of Kenya), an adoption court is required to give consideration to the wishes of the child. In doing this it should consider the age and understanding of the child. The same is the practice in matrimonial cases.

2. Context and implementation

139. In Kenya, the elder members of the society have taken decisions concerning children. Although changes have taken place and children's views are now being taken into consideration, this is still minimal In educational institutions, school authorities make decisions affecting the management of the institutions, including rules and regulations. Although there is a policy provision for students' councils and unions, students are rarely involved in the decision-making process in their respective institutions.

140. From primary to tertiary level, children are free to join clubs, associations and societies in school that enhance their growth and development. Such clubs in Kenya include Scouting, Girl Guides, 4K clubs, Environmental Clubs, religious associations and Child Rights Clubs. The present education system has, however, stretched the school curriculum such that there is little time left for co-curriculum activities, including clubs. Various organizations have been advocating for children's opinions to be taken into account while taking decisions concerning them. These organizations, which include KAACR, ANPPCAN and CCF, have conducted several workshops aimed at sensitizing the communities on the rights of children, including the freedom of expression. The Convention has so far not been incorporated in the curriculum of training teachers and other professionals working with children. The Children's Department and several child rights NGOs conduct in-house orientation courses on the Convention for their officers.

141. The training of teachers, social workers and medical personnel includes components of child growth and development. However, other disciplines do not include these topics, and interested professionals have to undergo post-graduate training.

V. CIVIL RIGHTS AND FREEDOMS: ARTICLES 7, 8, 13, 14, 15, 16 AND 37 (a)

A. Articles 7 and 8. Name, nationality and preservation of identity

1. Legal and constitutional framework

142. Every child in Kenya has a right to be registered at birth. The requirements of articles 7 and 8 of the Convention on the Rights of the Child are reflected in Kenyan laws and policies.

143. The law on nationality is contained in sections 87-98 of the Constitution of Kenya. This is complemented by the Kenya Citizenship Act (Cap. 170, Laws of Kenya). A person can become a citizen of Kenya by birth, descent, registration or naturalization. Persons born in Kenya become citizens by birth if either parent is a Kenyan citizen. Children born outside Kenya become citizens by descent if both parents are Kenyan citizens. Where the parents are not married, the child acquires the mother's citizenship. Under section 97 (1) of the Constitution, such a child is entitled to dual citizenship until he/she is 21 years old. On becoming 21 years old, he/she must choose whether to remain a Kenyan citizen. Such a person loses Kenyan citizenship if he/she does not renounce the other country's citizenship by the age of 23 years. Citizens of Commonwealth or African countries which allow Kenyans to be registered as citizens can apply for registration, but they must have been lawfully resident in Kenya for at least five years.

144. The Constitution does not refer directly to children. However, the law provides for their right to special treatment and protection. The Births and Deaths Registration Act (Cap. 149, Laws of Kenya) requires every child, regardless of nationality, to be registered within six months after birth. The Registrar of Births and Deaths must maintain a register of births. The Register must contain the following:

> Name of child, including tribal names;
>
> Father's name (this does not have to be included if the parents are unmarried);
>
> Date of birth;
>
> Sex of the child;
>
> Mother's name;
>
> Place of birth; and
>
> Mother's usual place of residence.

This information helps to determine the age, identity and nationality of the child. It also helps to preserve and protect the child's identity.

145. Kenyan children born abroad must be registered. Abandoned children enjoy the same right to registration. Anyone who finds an abandoned child, or is in charge of such a child should notify the registrar within seven days of finding the child. Parents, guardians, or the occupier of the house in which a birth occurs must notify the Registrar. Similarly, those present during the birth, or those who are put in charge of a child must notify the birth to the Registrar. Persons in charge of institutions where a birth takes place must give notice of the birth. They must also provide all the information necessary for registration.

146. Every child must be given a name at birth. If the name by which the child was registered is changed, the parent or guardian may register the new name within two years. The name in the Register of Births cannot be changed. This protects and preserves the child's identity. However,

a name can be changed without interfering with the Register. This can be done through a deed poll under The Registration of Documents Act (Cap. 285, Laws of Kenya). If a child's name is changed, the parents or legal guardians should countersign the old and new names. But children who are over 16 years of age must give their consent to a change of their name by endorsing on the deed poll in the presence of an advocate.

147. The name of the father can only be entered in the Register on the request of both parents, or if they prove that they are married. A child born out of wedlock becomes legitimate when the parents get married to each other. In such a case the father's name is entered in the Register. But the child remains legitimate whether or not this is done. Such a child has equal rights with children born in wedlock.

148. The Registrar-General must keep a register of all adopted children. Adopted children are given an adoption certificate specifying the names of the adopter(s). On reaching 18 years, an adopted child is entitled to know who his/her biological parents are.

2. Context and implementation

149. Under customary practices, different rites, norms, and other traditional or customary values govern the naming of children in Kenya. Each ethnic community has its own naming system. A name helps to identify an individual in the community. It also helps to identify the clan or family to which an individual belongs. A name confers on the clan or extended family the responsibility to take care of a child in the absence of the parents.

150. Registration of births in Kenya was introduced in 1963 in Nairobi and Nyeri on a pilot basis. Later, compulsory registration was extended to other districts in phases until 1971 when registration was made compulsory in the whole country. The Attorney-General was initially responsible for the registration of births. In 1989, the Cabinet transferred the registration of births and deaths to a fully-fledged department in the Office of the President.

151. Registration services have been decentralized to the district level. This allows easy access for everybody. Registration of births is free of charge, and is done at the grass-roots level. This makes the process participatory because the people can identify with the exercise. It is also meant to bring the service close to the members of the public, and to limit transportation costs or other obstacles caused by distance.

152. Births occur mostly at home or in health institutions. To ensure registration immediately after birth, assistant chiefs, who are in charge of the smallest administrative units (sublocations), have the duty of registering home births. Because the sublocations are geographically small, the assistant chiefs are in touch with the local people. They also know most of what happens in their localities. Currently, only hospital staff register births occurring in their institutions. There are plans to identify traditional birth attendants and other suitable community workers to register home births. The community-based system of civil registration is designed to enhance accessibility of the service to the people. Under this system, all registration personnel/agents in a district, including health institutions' staff and assistant chiefs, are trained. The Registrar's

Department has identified trainers of trainers for each district. These perform continuous participatory training activities for new agents when the need arises. They also undergo annual refresher courses.

(a) Measures to make the need for registration widely known

153. Different awareness-creation strategies have been designed for each district taking into account the diversity of cultures. The campaigns first target community/opinion leaders who then sensitize the public. The campaigns are meant to create a change of attitude towards registration. To address obstacles related to sociocultural values, local opinion leaders and community workers are used for mobilization and sensitization. The communities are involved in the entire process through public meetings at sublocational level. In the past, both the print and electronic media have been used for awareness campaigns.

(b) Coordination and monitoring of civil registration

154. The registration activities described earlier are monitored at the head office and district level through District Civil Registration Monitoring Committees (DCRMCs) and District Coordination Committees (DCCs). These committees are composed of personnel from different government departments, including the provincial administration, the Ministry of Health, the Central Bureau of Statistics, the Department of Children's Services and the Ministry of Education. Other members of the DCRMC are women's groups, NGOs operating within the district, Church leaders, youth groups and other interested groups. Because of the uniqueness of Nairobi, where the assistant chiefs may not be easily accessible, the City Council coordinates registration activities. Machinery has also been put in place to identify community workers who can be used for registration and community mobilization and sensitization.

3. Achievements and constraints

155. The emerging practice in some schools to require proof of registration and immunization has encouraged the registration of births.

156. It is estimated that only 30 per cent of births are registered annually. The larger proportion of these registrations occur in health institutions. Urban areas have the highest number of registered births. Although registration is still very low, knowledge of registration has increased. The use of assistant chiefs as registration agents has also had a positive impact. The training and use of assistant district registrars (ADRs) who visit the locations has also had a positive impact. With the assistance of UNICEF, the Department has acquired motorcycles which the ADRs use. However, the fluctuating climatic conditions and the poor terrain limit the number of visits they can make. The low coverage and low knowledge about civil registration is attributed to a combination of factors. These include:

(a) Infrastructure. The country's poor infrastructure makes it hard to reach all targeted children for registration. This is made worse by the poor and fluctuating climatic conditions in some areas. Most districts in North Eastern, parts of Eastern and a large part of Rift Valley Provinces are not easily accessible;

(b) Cultural beliefs. Some cultural beliefs, norms and values do not encourage registration. Some communities fear revealing the birth of new babies to strangers because they fear either witchcraft or breaking a taboo that children should not be counted. The nomadic lifestyles and other values and norms of the many different ethnic groups also impede registration;

(c) Poverty and ignorance. Famine and drought in most areas have kept people moving in search of food and water. It is not easy to reach such people for registration. Low enrolment in schools also accounts for the poor level of registration. In such areas there is a high level of ignorance of both the law, the registration process, and its relevance and importance. Since there is no tangible benefit attached to registration, many people do not see the need to register births. The situation of destitute and refugee children poses a major challenge for registration. Most of these children will not reveal their identity. This makes it hard to identify their parents, or to know whether they are registered. Some of these children were abandoned, and it is difficult to ascertain whether they had been registered prior to abandonment. It is also very hard to mobilize street children who avoid formal institutions and requirements;

(d) Poor health facilities. Because of poor health facilities and the introduction of cost sharing in health services, many mothers deliver at home. Births occurring at home tend not to be registered. Although health factors partly explain the high infant mortality rates, cultural explanations account for hidden births. The sparse distribution of health facilities also plays a major role in low registration;

(e) Perception of assistant chiefs. The effectiveness of assistant chiefs is hampered because they are seen as law enforcement officers. Because of their poor pay, assistant chiefs also see registration as an added burden for which they are not compensated;

(f) Inadequate financial and human resources. Registration activities are hampered by diminishing funds from the Treasury and less external funding;

(g) Lack of computerization. The Government has yet to develop a computerized system for civil registration. Without this, it is difficult to monitor progress and provide the necessary statistics for planning.

B. Article 13. Freedom of expression

1. Legal and constitutional framework

157. The Constitution of Kenya protects the right of all persons to the freedom of speech and expression. The law may impose restrictions on the exercise of these freedoms in certain cases, for example:

(a) In the interests of defence, public safety, public order, public morality and public health;

(b) To protect the reputations, rights and freedoms of other persons;

(c) To protect the private lives of persons concerned with legal proceedings;

(d) To prevent the disclosure of confidential information;

(e) To maintain the authority and independence of the courts;

(f) To regulate the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television;

(g) To impose restrictions on public officers or persons in the service of a local government authority who have done things that are not justifiable in a democratic society.

158. Restrictions limiting the freedom of expression are contained in several statutes such as the Penal Code (Cap. 63, Laws of Kenya) (on criminal defamation), the Defamation Act (Cap. 36, Laws of Kenya), the Copyright Act (Cap. 130, Laws of Kenya) and the Official Secrets Act (Cap. 187, Laws of Kenya). Although the restrictions limit the exercise of freedom of speech and expression, they also protect an individual's reputation. Any person may institute an action and claim damages for injury to his/her reputation. However, things said during judicial proceedings by those taking part (judges, magistrates, commissioners, advocates, assessors, witnesses or parties to the proceedings) cannot be the subject of a suit. The Defamation Act forbids the publication of blasphemous, seditious or indecent matter.

2. Context and implementation

159. Traditionally, children were allowed various means to express themselves that did not interfere with cultural norms. These included songs, games and dances, and were especially encouraged during socialization. Drama, music and arts festivals have become national events which bring schoolchildren together to compete for prizes. These activities are complemented by other activities like the production of school magazines. State and privately owned television stations provide opportunities for children to participate in debates on issues of national and international importance, and those touching on their own welfare. The Government encourages teachers to listen to the views of children. Despite all this, student strikes have been reported in a number of Kenyan schools. These usually result from lack of adequate channels through which children can express their grievances. These strikes have led to the disruption of learning activities in the affected schools.

160. Although there is overwhelming evidence that Kenyan children have the freedom to express themselves, a lot needs to be done to establish the degree to which children's views are heard within learning institutions and the family. There is a need to examine the extent to which children's views are taken into account in decisions affecting them such as the type of punishment and how funds are spent.

161. The Children Bill (1998) provides that in matters of procedure affecting a child, the child should be able to express an opinion and to have that opinion taken into account, depending on the age and maturity of the child. This will ensure that children are allowed as much freedom as possible to express themselves, especially on matters affecting them. This requirement is consistent with the Convention on the Rights of the Child.

C. Article 14. Freedom of thought, conscience and religion

1. Legal and constitutional framework

162. Section 78 of the Constitution of Kenya guarantees freedom of religion and conscience. It also recognizes the existence of indigenous African religions and practices which may be different from Christian or Islamic practices. Section 66 of the Constitution provides for the establishment of cadis' courts. These are presided over by cadis who must be Muslims with the necessary knowledge of Islamic law. Cadis' courts deal with matters relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties are Muslims. The Penal Code further protects the freedom of religion. It makes it an offence to insult the religion of any group of persons. The Law of Succession Act (Cap. 160, Laws of Kenya) exempts Muslims from its provisions in matters of intestate succession.

2. Context and implementation

163. These elaborate constitutional and legal provisions on the freedom of thought, conscience and religion make it clear that Kenya, which has diverse ethnic, racial and religious groups, recognizes the importance of accommodating diverse cultural and religious beliefs. The Government is committed to creating an environment where religious tensions do not threaten national unity and where everyone is free to practise their religion.

164. Both adults and children are entitled to the freedom of thought, conscience and religion. However, parents and guardians nurture children in their respective religions when they are still young. On coming of age, children can choose to follow their parents' faith or adopt another religion altogether.

165. Many public schools in Kenya, especially secondary schools, are sponsored by religious organizations. These schools basically offer secular education in keeping with the official curriculum. No undue emphasis is placed on religious education in such institutions. Few cases are reported of children from different religious faiths being forced to adhere to the faith of the denomination sponsoring the school. Religion is not a condition of entry into a school. A few cases have, however, been reported of schools forcing pupils, especially girls, to adopt a particular dress code which confirms to the norms of the sponsoring religion.

166. In Kenya, religious freedom has in some instances promoted a number of practices that violate enjoyment of individual rights and freedoms. This has mainly been the case with certain religious sects. Some beliefs and practices of these sects, such as prohibition of medical treatment and promotion of female circumcision, do not conform to the rights and freedom of certain groups like children and women. Such beliefs and practices therefore need to be modified by legislation. The contradictions between the rights and freedoms of the individual and the freedom of thought, conscience and religion continue to attract attention and remain a sensitive issue in the country.

D. Article 15. Freedom of association and peaceful assembly

1. Legal and constitutional framework

167. The Constitution of Kenya protects the freedom of assembly and association. This is the right of individuals to assemble freely, associate with other persons, and particularly to form or belong to trade unions or other associations to protect their interests. This right is, however, subject to some restrictions. These include:

(a) Protection and defence of the republic, public safety, public order, public morality or public health, and for the protection of the rights and freedoms of other persons;

(b) Imposing restrictions upon public officers, members of a disciplined force, or persons in the service of a local government authority;

(c) The regulation of the activities and running of trade unions.

168. Restrictions on freedom of assembly and association must be exercised in a manner which is justifiable in a democratic society. Legal reforms adopted in 1997 removed the requirement for those assembling to obtain a licence from the administration. People wanting to demonstrate, hold rallies or assembly for peaceful purposes are now only required to give notice to the local police so that security can be provided.

169. The Kenya Scouts Act (Cap. 219, Laws of Kenya) and the Girl Guides Act (Cap. 220, Laws of Kenya) provide for the establishment of the Kenya Boy Scouts Association and the Kenya Girl Guides Association. The statutes further protect the activities and interests of these associations. They state that these associations are not government agents, or under government direction, but are run exclusively by their members.

170. There is no restriction in Kenyan law on the right of children to assemble and associate, but such association or assembly is subject to the general restrictions mentioned earlier.

2. Context and implementation

171. Children in primary and secondary schools are encouraged to join extracurricular activities such as academic clubs and societies, debates, exhibitions, science congresses, journalistic clubs, music, dance and drama, sports and games. Children join one or more of these activities depending on their interests, talents and capabilities. The clubs and societies are free to organize activities and competitions with neighbouring schools.

172. During all National Day celebrations, children feature prominently in all sorts of activities to express their patriotism, needs and concerns. These include environmental degradation, child abuse and the plight of street children. Some national days such as the Day of the African Child and Universal Children's Day focus specifically on the child. Such days are celebrated through week-long activities by, and for, children. During such celebrations, peaceful demonstrations and parades by children are common.

E. Article 16. Protection of privacy

1. Legal and constitutional framework

173. Section 76 of the Constitution of Kenya protects individuals from arbitrary search of their person or property, or the unlawful entry by others into their premises. However, the Constitution allows for laws which might limit such protections. Such cases include:

(a) When it is in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development or utilization of any other property in order to promote the public benefit;

(b) When such laws are required to promote the rights or freedoms of others;

(c) In order for an authorized officer of the Government of Kenya, or of a local government authority, or a corporate body established by law to inspect premises for the purpose of taxes, rates or dues, or for the purpose of carrying out work concerned with government property that is lawfully in such premises;

(d) For enforcing the judgement or order of a court in civil proceedings, or an entry by order of a court.

174. Limitations to the rule protecting privacy must be made in a manner that is reasonably justifiable in a democratic society. They are also permitted if the person whose right is infringed consents. Section 79 of the Constitution makes it unlawful for anyone to interfere with an individual's freedom to receive and send correspondence. The Penal Code provides for the punishment of anyone who destroys, opens or interferes in any way with mail or any matter sent through the post office. Some other legislative measures complement and implement this constitutional position protecting the right of privacy. These include the Penal Code which makes it a criminal offence to publish any false information about a person; the Defamation Act which allows one whose reputation has been damaged maliciously to institute civil proceedings in court for redress, and the Evidence Act (Cap. 80, Laws of Kenya) which provides various safeguards against the infringement of the right to privacy. The Criminal Procedure Code (Cap. 75, Laws of Kenya) extensively limits the power of the police to arrest or search a person or property without a warrant issued by a magistrate. This ensures that an individual is not arbitrarily deprived of the right to privacy.

175. The Police Act (Cap. 84, Laws of Kenya) allows the police to arrest and search only on reasonable suspicion. But in general cases, a warrant will be required. Individuals are entitled to demand to see the warrant authorizing a police officer to search their premises.

176. Section 53 and 55 of the Public Health Act (Cap. 242, Laws of Kenya) protects the right to privacy of those suspected of having venereal diseases by requiring that such persons be treated in private. Offences such as assault, indecent assault, malicious damage to property and abduction are meant to safeguard the personal privacy of individuals and non-interference with their honour and property. These provisions are universal in application and cover children too.

2. Context and implementation

177. These provisions apply to all irrespective of age. Therefore, children have the same entitlement to privacy as adults. Restrictions on the right to privacy are expressly authorized by the Constitution.

178. Some school authorities are known to interfere with the privacy of the children under their care in order to ensure discipline. They intercept and confiscate correspondence sent to, or by, such children. No research has, however, been carried out to determine the prevalence of this practice. Children from poor families often do not enjoy the right to privacy because in many cases the entire family shares one room. The 1998 KDHS reported that 47 per cent of families in rural areas and 29 per cent in urban areas shared one room. This is because housing is relatively expensive in Kenya. It forces many families in urban centres into slum dwellings where their privacy, that of the family, and particularly that of the children is greatly compromised. Efforts are being made to develop a policy framework that addresses the housing needs of the poor.

179. There are incidents of law enforcement agencies interfering with the right to privacy contrary to the law. Most of these cases are not remedies because of the victims' ignorance. Where they are children, they lack someone to take up the case on their behalf. It is also evident that there is likely to be a lack of privacy in overcrowded children's institutions.

F. Article 17. Access to appropriate information

1. Legal and constitutional framework

180. Section 79 of the Constitution of Kenya protects the freedom to receive ideas and information without interference. The main objective of government policy on information is to ensure that the media, in addition to fulfilling their traditional roles to enlighten, educate and entertain the public, serve as a catalyst for nation-building and socio-economic development. A number of statutes regulate and facilitate access to information in both print and electronic media. The Kenya Library Services Board established by the Kenya National Library Service Board Act (Cap. 225, Laws of Kenya) has a wide mandate to promote, establish, equip, manage, maintain and develop libraries in Kenya. The Board also plans and coordinates library, documentation and related services in Kenya. It advises the Government, local authorities and other public bodies on all matters relating to library, documentation and related services. It participates and assists in campaigns for the eradication of illiteracy, stimulates public interest in books, and promotes reading for knowledge, information and enjoyment. It also acquires books produced in and outside Kenya, and such other materials and sources of knowledge necessary for a comprehensive national library.

181. The Books and Newspapers Act (Cap. 111, Laws of Kenya) requires all books and newspapers to be registered with the Registrar of Books and Newspapers. Any person who prints or publishes a newspaper must deposit a bond, which may be used to pay damages or costs awarded for any libel published in the newspaper. The Minister may, however, exempt a printer or publisher from this requirement. Newspapers published by any school registered under the Education Act (Cap. 211, Laws of Kenya) for distribution solely among students and their parents are exempted from executing a bond.

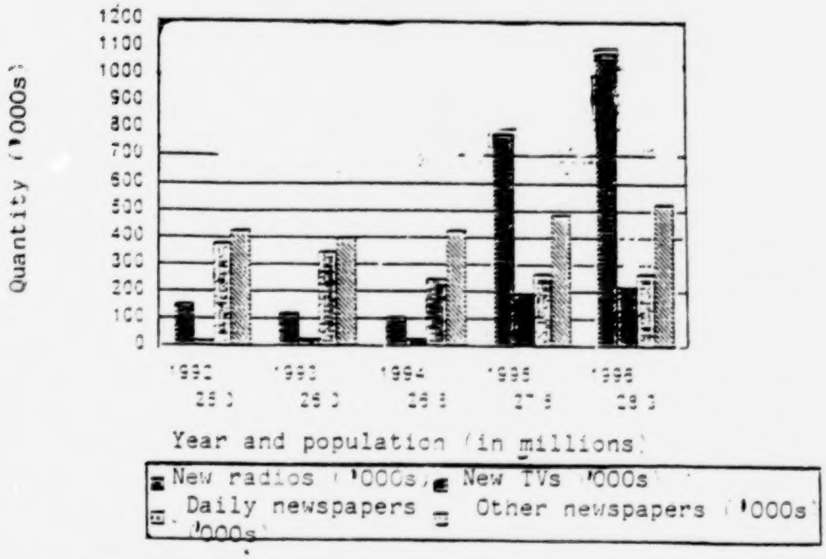
182. The law also regulates the cost and content of books. The Kenya Literature Bureau is empowered by the Kenya Literature Bureau Act (Cap. 209, Laws of Kenya) to promote the production, printing and distribution of books of a literary, educational, cultural or scientific nature, and to make educational materials available to schools at reasonable prices. The electronic media, including radio and television, are also facilitated by statutes such as the Kenya Broadcasting Corporation Act (Cap. 221, Laws of Kenya) and the Kenya Posts and Telecommunications Corporation Act (Cap. 411, Laws of Kenya). The Kenya Broadcasting Corporation Act establishes the Kenya Broadcasting Corporation (KBC). The KBC is required to provide independent and impartial broadcasting services for information, education and entertainment in English, Ikiswahili and other languages. It also has a wide mandate to produce, manufacture, purchase, acquire in any other way, or dispose of films, gramophone and other mechanical records, tapes, wires and perforated rolls through which words, visual images or ideas are mechanically or electronically produced or presented. The Corporation may also collect news and information in, or from, any part of the world in any manner that is fit. It is also authorized to license broadcast-receiving apparatus and dealers and repairers of such sets.

2. Context and implementation

183. Formal information transmission mechanisms are dominated by the print and electronic media. By 1992, 55 per cent of Kenyan families owned radios while 7 per cent owned televisions (Welfare Monitoring Survey WMS II).

184. There has been a dramatic rise in the consumption of electronic media transmitters (television and radios). As figure 4 shows, between 1992 and 1996, the recorded purchase of radios and televisions increased from 6.2 per thousand to 38.3 per thousand of the population for radios, and from 0.91 per thousand to 7.7 per thousand for televisions. This coincided with a relative decline in consumption of the print media with sales of daily newspapers declining from 15.2 per thousand in 1992 to 9.3 per thousand in 1996. The data also show a relative decline in the share of Kiswahili publications, from 20.8 per cent to 12.0 per cent of daily newspapers, and from 18.4 per cent to 7.4 per cent of other newspapers. Economic liberalization has vastly expanded the choice for Kenyans with respect to formal print and electronic media. It can be argued that liberalization has led to a shift from print to electronic media.

Figure 4. Consumption of print and electronic media



Source: Economic Survey, 1997.

185. Traditionally, Africans have used a variety of non-formal modes of communication, such as drums, folk media, popular theatre and interpersonal contacts. Even in the modern day, when the mass electronic and print media dominate, these traditional forms of communication still play a significant role. Non-formal communication methods have a role to play because they overcome the barriers of illiteracy, and offer entertainment alongside the spreading of the message. They also use culturally acceptable techniques and encourage community participation (Khasiani, 1995).

186. For these reasons, development agencies have recognized non-formal communication methods, especially folk media and popular theatre, as powerful tools for initiating community motivation and mobilizing support and participation in programmes. Development agencies have thus been able to use culturally based performing arts and other communication methods to promote development messages passed through other formal channels (Khasiani, 1995).

3. Existing or planned mechanisms for coordinating policies for children and monitoring the Convention

(a) Television

187. KBC television transmits 260 hours of programme material a month. It devotes 470 minutes a week to children's programmes. This amounts to 15 per cent of the week's programming, and targets children between the ages of 3 and 18. Programmes focus on issues related to the youth, parent-child relationships, reproductive health, peer pressure, and emerging social trends. The format of the programmes includes talk shows and panel discussions where there is free exchange of ideas and mature debate.

188. Programmes targeted for the age category 3-13 are mainly short skits, dance, story time and magic shows. A total of 38.76 per cent of the programmes are educational, and include a school quiz and programmes on environmental awareness. The content is modelled on the curriculum of the 8-4-4 system of education.

189. KBC has begun a sign language facility for some children's programmes to involve deaf children. The participation of children with disabilities on radio and television programmes has increased. The KBC is guided by the internationally accepted Children's Television Charter, adopted in Munich in 1995. This Charter promotes the right of the child to seek, receive and impart information and ideas of all kinds, through the media of choice. Over the last two years KBC television has begun a new initiative where talented children are identified through auditions, and given necessary training in scripting and presenting children's programmes. KBC provides the studio facilities, production personnel and free airtime for broadcasting the programmes. A second television channel linked to the Electronic Media Network (M-NET) of South Africa runs a children's broadcasting service, Kids Television (KTV), and is linked via satellite to KBC. The Kenya Television Network (KTN) began broadcasting a free unencrypted UHF service in February 1990. This is a 24-hour television service viewed by 86 per cent of all households with televisions in Nairobi. The current service has a wide mix of entertainment programmes. Twenty per cent of the week's total broadcast hours are devoted to children's programmes. Owing to the limited reach of its transmission signal, KTN is an urban-based, up-market medium. In order to increase the diversity of information disseminated by the broadcast media, the Government has allocated additional broadcast licences to Stella-vision, Citizen TV, and Nation Media Group. The Ministry of Information and Broadcasting is responsible for allocating licences in a way that ensures the widest possible diversity of programming. All licence holders are required to consider the needs and interests of the Kenyan people in a multicultural society.

190. In addition, there are three multi-channel cable television stations broadcasting in English, Arabic, French, Gujarati and Hindu. These stations broadcast 12 hours every week. There is no provision for local news and children's programmes.

191. Advertisements and foreign programmes may be booked on all television stations subject to the Censorship Committee's approval. This Committee vets all material before transmission. Proposed radio and television scripts or ready programmes are submitted to the Censorship Committee for approval. Guidelines for acceptance include relevance to truth, maintaining a sense of decency compatible with the Kenyan culture, and the promotion of political harmony. Tobacco and alcohol advertising are not allowed in the breaks on news broadcasts on television and radio.

192. The Government actively encourages the international exchange of social and cultural information. The establishment of a National Commission for UNESCO has further facilitated access to international funding and expertise for cultural participation and development. In addition, Kenya is a member of the Union of Radio and Television Networks of Africa (URTNA) and houses its Programme Exchange Centre. This is a clearing house that facilitates the exchange of radio and television programmes throughout member States. The programmes

include dramas, documentaries, musicals and children's cultural programmes. Other television stations involved in programme exchange include Trans-Atlantic Television (Transtel), the Cable News Network (CNN), the British Broadcasting Corporation (BBC) and Deutsche Welle Television.

(b) Radio

193. There are two national services in English and Kiswahili, and a regional service, which broadcasts in 17 local languages, that cover the rural areas. The Government has modernized its radio network by upgrading old transmitters and constructing eight new ones. By the end of the modernization period (1999) there will be 16 radio transmitters across the country raising signal receivership of the population to 95 per cent. National estimates show that there are close to 4 million radio sets in the country. Currently, about 90 per cent of the country is covered by radio. About 92 per cent of Kenyan households have one or more sets in working order.

194. Radio currently transmits programmed material amounting to 2,072 hours a month. Children's programmes on the regional service provide a unique opportunity to speak to children in their own mother tongue. In any particular week, children's programmes consume 135 minutes of the Swahili service, 240 minutes of the English service, 355 minutes of the Western service, 265 minutes of the Central service, and 300 minutes of the Eastern service.

195. The regional service operates three different radio services: Central service, which broadcasts in Kikuyu, Kikamba, Kimeru and Hindustani; Eastern service, which broadcasts in Somali, Boran, Rendille, Burje and Turkana; and the Western service, which broadcasts in Luo, Kisii, Luhya, Kalenjin, Kuria, Teso and Pokot.

196. The Kenya Institute of Education in conjunction with the KBC has run the educational media service for more than six years. This is a schools radio broadcast service serving primary and secondary schoolchildren in the 8-4-4 system of education. Airtime is provided free of charge, and teachers present programmes with pupil participation in mathematics, English, science, arts and crafts, and social studies.

197. There has been a proliferation of FM radio stations, confined largely to Nairobi and Mombasa, and largely geared towards entertainment and advertising. There are no indications that the concerns of children and youth will be addressed on these channels.

(c) Film

198. Static cinema. There are 43 cinema theatres operating in Kenya, over 30 of which are located in the urban areas. These are sometimes referred to as "static" cinemas to distinguish them from the mobile cinema vans. Combining colour, movement and sound to a captive audience, cinema is a powerful medium that caters for the young up-market population with a disposable income.

199. The Kenya Film Censorship Board vets all films shown in all cinema theatres in Kenya. A large majority of the films (62 per cent) are for general exhibition, and include action, adventure and drama. Certain categories of films require proof of age. Films centred on

children's concerns are rarely screened in cinema theatres. For young children, participation in cinema theatres is confined largely to charity premieres of upcoming Walt Disney films. A major disadvantage of this channel in the imparting of information is its relatively low reach and high production costs.

200. Mobile cinema. During the first decade of independence, film production activities of the Ministry of Information and Broadcasting remained essentially an integral part of television programme production services. In 1967, Kenya was among the first African States to establish public control over the importation and distribution of films through the establishment of the Kenya Film Corporation.

201. In 1972, the Ministry of Information and Broadcasting took a major step in the development of film production services by establishing a separate 16 mm documentary Film Production Unit. This was followed in 1975 by the establishment of the Kenya Newsreel to produce 35 mm news documentaries. A film school was established at the Kenya Institute of Mass Communication in 1976. It trains professionals in all technical aspects of film-making. This has further enhanced the continuing public commitment to the development of film production resources in Kenya. Among the services offered include the production of news, feature films, and commercial films and, most importantly, the screening of documentary films for all school-going children in all provinces of Kenya. Mobile cinema vans carrying projectors and screens tour monthly on regular itineraries, screening films in all districts in Kenya. The productions screened are a combination of documentary, religious and feature films from the East African region. The films cover diverse themes relating to children's cultural identity, language, values, respect for the natural environment and career guidance.

(d) Non-governmental organizations

202. Non-governmental organizations working with and for children produce their own magazines and newsletters to which children are encouraged to make their own contributions and express their thoughts and feelings. These include magazines and newsletters published by the KAACR which publishes a magazine "The Child", ANPPCAN, CCF, Action Aid, the Netherlands Development Organization, SNV and the Child Welfare Society of Kenya (CCWSK). The Girl Child Network (GCN) under the auspices of CARE Kenya publishes "Binti". The various publications are made available to children free of charge. The organizations also exchange these publications amongst themselves within and outside the country.

203. Churches and religious organizations have also played a role in producing and distributing children's and youth publications. Most of these are produced at the local church and are usually in English, Kiswahili, or the local language of the particular community.

(e) Children's magazines

204. There are seven children's magazines published by independent media groups primarily catering for urban primary schoolchildren. These include: "Rainbow", "Picha Hadithi", "New Guinea", "Watoto", "Sparkle" and "Pied Crow". These magazines use the medium of comic books to address serious themes such as retelling African folk tales and abridging already

published serious novels by local and international writers. The educational animated magazine "Pied Crow" was until 1997 distributed free of charge to all primary schools in Kenya. The magazine was published and funded by CARE Kenya, an international NGO. The Daily Nation has a weekly supplement for children.

(f) Children's publishing

205. The British Council, in partnership with the East African Educational Publishers, Longhorn Kenya and the Cooperative Bank of Kenya launched "Voices", a unique project that gives children in Kenya an opportunity to write and publish short stories. Over 20 children have published their short stories on topical issues. More recently, three Kenyan child authors attended the Zimbabwe International Book Fair.

206. The Foundation for the Promotion of Children's Science Publications in Africa - Kenya Chapter (CHISCI) has been actively involved in facilitating, and promoting a life-long reading and book buying culture among Kenyan children. This has been achieved through the hosting of an annual book fair. This is a child-centred event with creative and engaging activities for children to foster a reading, writing, science and spiritual culture.

207. The introduction of reading facilities known as the Reading Tent within the book fair was pioneered by CHISCI and is now recognized as an essential component of book trade promotion. Other book fairs in Africa have emulated this concept and taken the initiative to deliberately target children as important visitors to the fairs. This cultivates the quality and attitudes of the future market.

208. Deliberate efforts are under way to establish a National Book Production Plan. This will control book imports, so that only those required for use in higher courses and which it is impractical to produce locally will be imported. Besides aesthetic and educational considerations, a National Book Plan will supply books within the economic means of the Kenyan People.

(g) Library services

209. The Kenya National Library Service organizes a wide range of activities for children. It also provides libraries at more than 20 locations which contain children's sections. These include annual book fairs, national book weeks, Braille library services for the blind, community library and Internet services. A camel library catering for the needs of nomadic communities operates in arid and semi-arid regions of the country.

(h) Public information services

210. In the effort to ensure the wide dissemination of news and information from national and international sources, the Ministry of Information and Broadcasting has public library services in Nairobi and in 12 provincial and district information offices. There are children's literature reading sections where a wide selection of books by African authors are available. These services cater for the great thirst for information, education and entertainment among primary schoolchildren, especially during school vacations.

(i) School textbooks

211. The Government is aware and concerned about the poor availability of appropriate children's books for academic instruction and general information. With regard to instructional materials, textbooks are scarce and expensive, especially at primary level. It is estimated that the Government and community resources supply only 25 per cent of the total instructional materials required. Supplementary reading materials are rare, and whatever is available is largely unrelated to the environment and lifestyle pupils experience in their communities.

212. Low-cost techniques for printing textbooks have been identified, and a textbook unit is to be set up. The private sector has been sensitized to enhance its capacity to publish and print books. Following the long-running advocacy campaign by private publishers, donors and other stakeholders in the education sector, two policy documents on textbooks for primary schools were launched in September 1998. These allow private publishers to access the school market, unlike in the past when State publishers had a monopoly in the publication and supply of textbooks. The policy documents explicitly point out that pupils will now be required to buy one course book per subject in any class. This will reduce the cost for parents who were previously required to buy many titles, which the children hardly had time to read.

4. Measures to make the provisions of the Convention widely known

(a) Rural press

213. There are 11 rural newspapers published by the Ministry of Information and Broadcasting. They are intended to boost literacy skills by providing reading materials on themes topical to the local population. The papers are published in Kiswahili. They attract readership among rural populations of Central, Coast, Rift Valley, Western, Eastern, North-Eastern and Nyanza provinces.

214. The Ministry of Information and Broadcasting in 1998 held a series of training workshops facilitated by the UNICEF Kenya country office to train its field staff in the rural press on the interpretation of the Convention on the Rights of the Child. This was aimed at making the Convention part of the content of the rural newspapers. Consequently, there is a bimonthly pull-out in the 11 rural papers on different articles of the Convention.

215. The Kenya Association of Journalists for the Child (KAJOC) was launched in 1997 for the purposes of making the provisions of the Convention on the Rights of the Child widely known. In conjunction with the Thomson Foundation of the United Kingdom, it has conducted a series of training workshops to advocate a heightened emphasis on children's rights and ensure that these are covered in the print media.

(b) Non-governmental organizations

216. The CCF produced an abridged pictorial version of the Convention on the Rights of the Child in English and Kiswahili in 1992. This has been distributed to all governmental and non-governmental organizations dealing with children and in schools, especially those in CCF's areas of operation. CCF has 45 projects evenly distributed across the country.

Over 12,000 copies have been produced and distributed. The KAACR simplified the Convention on the Rights of the Child into the four basic rights of survival, development, protection and participation in 1993. That document is distributed through children's workshops and Child Rights clubs, which create awareness on child rights in schools and the community through education and community work. In total, 42 clubs have been established in Kisumu and Nairobi.

5. Constraints

217. The existing legal framework inadequately addresses the content of programmes of both the electronic and print media to ensure that they are appropriate for children. With respect to the moral content of information imparted to adults and children alike, the Penal Code has provided safeguards. It is an offence to make, produce or possess obscene writing, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, films or other objects tending to corrupt morals. This provision may be invoked to counter the production and distribution of pornographic material. There are no studies to indicate its effectiveness or otherwise in dealing with obscene material.

218. There are definite difficulties in regulating private avenues of communication such as those facilitated by the Internet, home videos and various computer networks.

219. There are, however, recent legislative developments aimed at liberalizing the communications sector, among other objectives. The Kenya Communications Bill (1997) pays particular attention to the content of communications in the print and electronic media. The term "content" includes radio and TV programmes such as news, documentaries, films, plays and educational and entertainment materials.

220. The regulatory framework created by the Kenya Communications Bill on matters of content may have far-reaching consequences when the Bill finally becomes law. It provides stiff penalties for the offence of distributing pornography, which is defined to include the distribution of "indecent" materials. Clearly, it would have an impact on the requirements of article 17 of the Convention on the Rights of the Child. As it is, the question of how effectively to regulate the content of information, especially from international sources, in the best interests of the child remains unanswered.

221. The overloaded 8-4-4 curriculum curtails the wholesome development of all children by limiting their leisure and recreation time. It also creates psychological pressure for children. Children in need of special protection are particularly vulnerable. The learning of children living in poverty is also affected by the absence of equipment and workshops required for effective participation in the current system.

222. The needs of communities, curriculum content, and the structure of education are not compatible. For example, the curriculum does not respond to the diverse needs of Kenyan children, especially those from arid and semi-arid lands (ASALs), whose environment and experiences are different, and children in need of special protection. The rigid and centralized

structure of education also makes school participation difficult for those from agricultural and sedentary communities. The content of learning materials and the teaching-learning process itself, especially in terms of gender and cultural sensitivity, is problematic. Textbooks and other learning resources often ignore the experiences of the girl child and children from minority groups. This hinders their cognitive and psychological development. In science and technology subjects in particular, female marginalization is glaring.

223. The facilities for learning are also not sensitive to the needs of some categories of the population, particularly disabled people. Their participation in learning is therefore limited. Outside school, very few children have access to television, radio or film as sources of education. This is because these are usually urban-based facilities. The situation is worse for poor communities and those in ASAL areas. Funding for local film productions to service the mobile cinema network is limited. There is a need to commercialize this service to generate funds to enable the Ministry to reach more children.

G. Article 37. Torture

1. Legal and constitutional framework

224. Section 74 (1) of the Constitution of Kenya states that: "no person shall be subjected to torture or to inhuman or degrading punishment or treatment". It also provides for exceptions to the prohibition against torture and inhuman or degrading punishment. It states that punishment inflicted according to the law shall not be considered to contravene this section.

225. The Children and Young Persons Act (Cap. 141, Laws of Kenya) contains the law relating to the protection and discipline of children. It sets out the various methods of dealing with child offenders. These methods are meant to ensure that no children offenders are punished in a way that is not appropriate to their age and welfare.

226. Section 25 (2) of the Penal Code provides that the death sentence shall not be passed on a person who was under 18 years at the time of committing the crime. A child who is proved to have committed murder may be detained at the President's pleasure in a place and under conditions the President may direct.

227. Section 27 of the Penal Code provides for corporal punishment for male child offenders. Section 23 of the Children and Young Persons Act empowers a person having care or control of a child, such as a parent or teacher, to administer reasonable punishment to the child, but makes it punishable for any person in whose care and custody a child has been left to wilfully assault, ill-treat, neglect, abandon or expose the child to suffering or injury to health. Any person who knowingly or wilfully causes such a child to become, or creates conditions which make a child to be in need of protection is liable to punishment. The Education Act (Cap. 211, Laws of Kenya) permits corporal punishment but restricts the manner of its infliction, the persons allowed to do so, and the instances in which it can be inflicted. These restrictions are meant to curb abuse of corporal punishment, its excessiveness, and to safeguard the dignity of the child being punished.

2. Context and implementation

228. Torture, cruel and inhuman punishments have caused a lot of concern in Kenya. While corporal punishment may be viewed by a section of the society as cruel and inhuman treatment, many people consider it necessary in order to discipline wayward children. Children in schools are still subjected to corporal punishment, and parents and guardians use it frequently. Cases have been reported of deaths and serious injuries resulting from corporal punishment. These have been punished in accordance with the law. Cases have also been reported of police and other law enforcement officials using excessive force and methods amounting to torture and cruel and inhuman treatment on children, especially street children. The Government discourages these practices by prosecuting any officer found guilty of unlawfully subjecting a child to such treatment.

229. Children in custody and other correctional centres have been reported to undergo torture from those in whose charge they have been left. Cases of parents and guardians using excessive force to discipline children, subjecting them to inhuman treatment like burning their hands for petty indiscipline have been reported to the Children's Department, the police and other government authorities. They are punished under the normal criminal law and under the Children and Young Persons Act. Teachers who infringe the rules regulating the infliction of punishment on pupils are disciplined according to the Teachers Service Commission Act (Cap. 212, Laws of Kenya) and the by-laws created under it.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE: ARTICLES 5, 9, 10, 11, 18, 19, 20, 21, 25

A. Article 5. Parental guidance

230. The Kenyan Government recognizes the important role of families in raising children. Some statutory provisions recognize parents' responsibility and rights over children. Under section 17 A of the Children and Young Persons Act (Cap. 141, Laws of Kenya), a court dealing with a child needing protection or discipline may consider returning such a child to the parents or guardian.

231. Under the Guardianship of Infants Act (Cap. 144, Laws of Kenya), the surviving parent has the right to be the guardian of a child. The court may also appoint a guardian if the dead parent did not do so, or if the testamentary guardian also dies or refuses to act. The court may also appoint a guardian if both parents are dead. In any case, both parents have the sole right to appoint a guardian for their child.

232. Under the Penal Code (Cap. 63, Laws of Kenya) it is an offence to take an unmarried girl under 16 years from the custody of her parents. The court will only remove a child from the custody or care of a parent who is guilty of cruelty and neglect of the child. There are penalties for parents who fail to take their duties and responsibilities towards their children seriously.

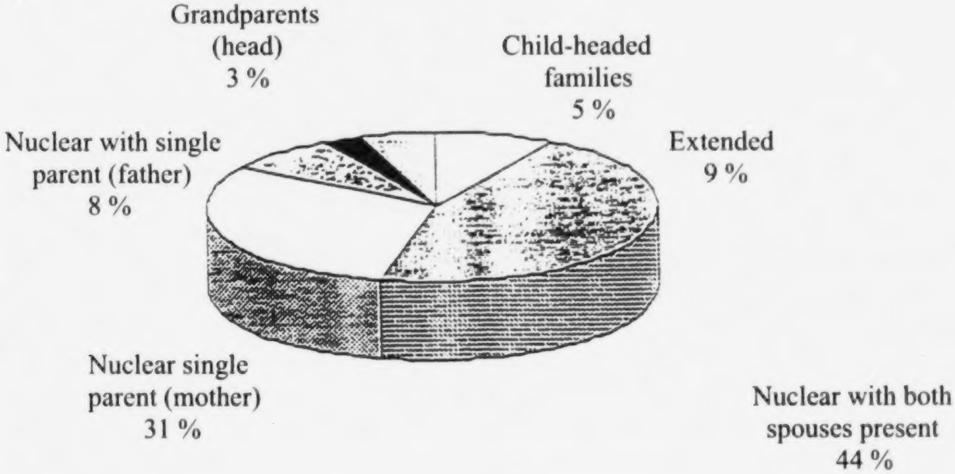
233. According to the Adoption Act (Cap. 143, Laws of Kenya) a court may not make an adoption order without the consent of either or both parents of the child to be adopted.

1. Context and implementation

234. In traditional Kenyan society, children belonged to the whole community. They were valued because they ensured the continuity of the community and lineage, and ensured care for parents in old age. Survival, development and protection were undertaken collectively by the extended families in the best interest of all members, especially children. However, changes, particularly modernization, migration and urbanization, have led to the disintegration of the extended family. The new family forms, which include the nuclear family, female- and child-headed families, and those headed by grandparents, are vulnerable. They fail to provide for the health, education, sanitation, shelter and water needs of children. This compromises the best interest of the child. The increasing population of children in need of special protection is evidence of this.

235. As figure 5 shows extended families constitute 9 per cent of the families. Nuclear families with both spouses present constitute the largest number of families at 44 per cent. Nuclear families with the mother as single head constitute 31 per cent, while nuclear families with the father as single head constitute 8 per cent. Although their numbers are relatively small, there also exist families headed by grandparents.

Figure 5. Percentage of families of various types



Source: A Survey of Children in Especially Difficult Circumstances in Kenya - November 1997.

236. Socio-economic factors also affect the family. This has given rise to non-conventional families. However, some aspects of the extended family persist. The extended family typically bears the burden of high dependency. It also acts as an informal insurance system, or mutual support mechanism. Traditionally, adult members of the extended family prepared children for adult roles. They had full authority to require any child to perform simple duties. This authority was not usually abused. Grandparents in particular were important agents of socialization in

traditional African society. They were instrumental in introducing young people to important matters such as the husband-wife relationship, sexual behaviour, larger social roles, values and traditions. They did this through story-telling, proverbs and songs. After the age of 10, grandmothers were closely involved with female grandchildren and grandfathers with male grandchildren.

237. Peer or age groups were also important socialization agents. They were usually segregated by sex. They helped to support the parents' values and to fulfil duties to the larger kin and ethnic group. Peer groups disciplined members through social ostracism. Physical punishment was rarely used. Traditional peer groups were close in age. More importantly, they went through rites of passage like circumcision together (Male and Onyango, 1994).

238. However, new agents of socialization have come into family life. These are the house workers commonly referred to as maids, ayahs or houseboys. They are usually engaged where the mother is in wage employment. In some cases, the educational and social background of the worker is different from that of the employer. They therefore offer alternative moral and value systems from those of the parents. In urban areas, the workers may also be from a different linguistic community from the family. Thus, they become a major socializer of children in language and moral behaviour.

239. The roles of members of the family have also been affected. In the modern family, the role of the father as a socialization agent has changed a lot. Some fathers seldom spend time with their children. Others spend much more time with their children. They are therefore more affectionate towards them than their own fathers were with them. In urban areas, grandparent's roles in socialization have also changed. This results from the physical distance between the village and the town. It also arises from the difficulties of the extended family living as a residential unit in towns.

240. Peer group roles have also changed in modern times. But they are still strong agents in a child's socialization. However, they support the values of their parents or larger cultural group less.

2. Existing or planned mechanisms for coordinating policies for children and monitoring of the Convention

241. The Government is committed to promoting community-based approaches to family well-being. This has led to the creation of the District Children's Advisory Committees (DCACs), as an effort towards preventive measures. DCACs involve all key players in Government, the private sector and NGOs in child matters. DCACs identify priority areas in each district and programme intervention with a view to improving the welfare of children. They encourage community participation and involvement.

242. Community mobilization has been enhanced through the registration of women and youth groups which have been formed to assist members through the Women's Bureau. The Ministry of Home Affairs, Culture and Social Services also helps to organize vocational training for children with disabilities. Organizations such as religious bodies and school committees have

made efforts to counsel parents and the youth on parenting issues. Amani Counselling Centre, an NGO, offers training in counselling for teachers and social workers. It also offers individual counselling. In addition, the Ministry of Education contributes teachers for service training courses.

243. The NGO sector has made a great contribution by targeting categories of children in need of special protection. It does this through their families, for example through funding income-generating projects and providing better housing. The Undugu Society of Kenya and the African Housing Fund are some of the organizations involved in such projects.

3. Constraints

244. Poverty is very real for a large proportion of Kenyan families. It is a major constraint in parental guidance and inhibits the development of a child's capacities. The 1994 Welfare Monitoring Survey identified 47 per cent of the rural population and 29 per cent of the urban population as poor. Legal provisions alone are not enough. For instance, the provision on granting bond to child offenders is not effective if, because of poverty, the parents are unable to raise money for their children's school fees. In addition, societal norms, attitudes and practices do not encourage the voicing of children's views in matters affecting them.

B. Article 9. Separation from parents

1. Legal and constitutional context

245. The main legal provisions on separation from parents are contained in the Guardianship of Infants Act (Cap. 144, Laws of Kenya). This deals with guardianship, custody and maintenance of the child. The Act applies irrespective of the family law system that applies to the child. Courts are required to decide cases of custody and maintenance in the best interest of the child. When a marriage breaks down, the court may make an order for custody taking into account the welfare of the child, the conduct of the parents, and their wishes.

246. The Matrimonial Causes Act (Cap. 152, Laws of Kenya) states that in cases involving divorce, separation or nullity, the court should first take into account the custody, maintenance and education of the child. The Act places the duty of determining rights to custody on the Guardianship of Infants Act (Cap. 144, Laws of Kenya).

247. The Subordinate Courts (Separation and Maintenance) Act (Cap. 153, Laws of Kenya) provides that a woman in a monogamous marriage may apply for a separation and maintenance order on various grounds. These include the husband's persistent cruelty to her and the children, or failure to provide reasonable maintenance for the family.

248. The court can award the legal custody of any children of the marriage to the mother. The Act allows the Attorney-General to seek direction from the court on the father's custody and maintenance of a child where a woman is dead or absent from Kenya. The Attorney-General must, however, be satisfied that were it not for death or absence, the parent would have had reasonable grounds to apply to the court for an order.

249. The Children and Young Persons Act (Cap. 141, Laws of Kenya) recognizes that sometimes children should be separated from their parents for their own protection. This includes cases where there has been sexual and physical abuse, or where the children are neglected, exposed to moral danger, are in possession of drugs, or are living in dangerous premises. The juvenile court has the power to commit a child to a care institution, or to the care of a fit person. It also has a wide range of options to separate the child from the family if it is in the best interest of the child. A child committed to an institution has the right to maintain contact with his/her family through release on licence. In cases of imprisonment, the Prisons Act (Cap. 90, Laws of Kenya) allows mothers to take children below 4 years to prison with them.

2. Context and implementation

250. Causes of separation include divorce, separation, imprisonment of parents, or the institutionalization, neglect and abandonment of children.

251. Parents are the first teachers of their children. However, some children end up with other caregivers within the extended family, other families or institutions. Separation from parents, for whatever duration of time, has permanent effects on a child. Children need role models, and the love and care of their parents.

252. Recently, tribal animosities in the Rift Valley and Coast Provinces of Kenya have caused children to be separated from their parents.

253. The number of children accompanying their mothers to prison is quite significant, as shown in figure 6. However, the separation of children from their parents is not always bad. Sometimes it is necessary, for example in serious cases of child abuse, or in a legal struggle where a child left to continue living in the neighbourhood may face retribution. In cases of serious abuse, the child should be moved to a safe place.

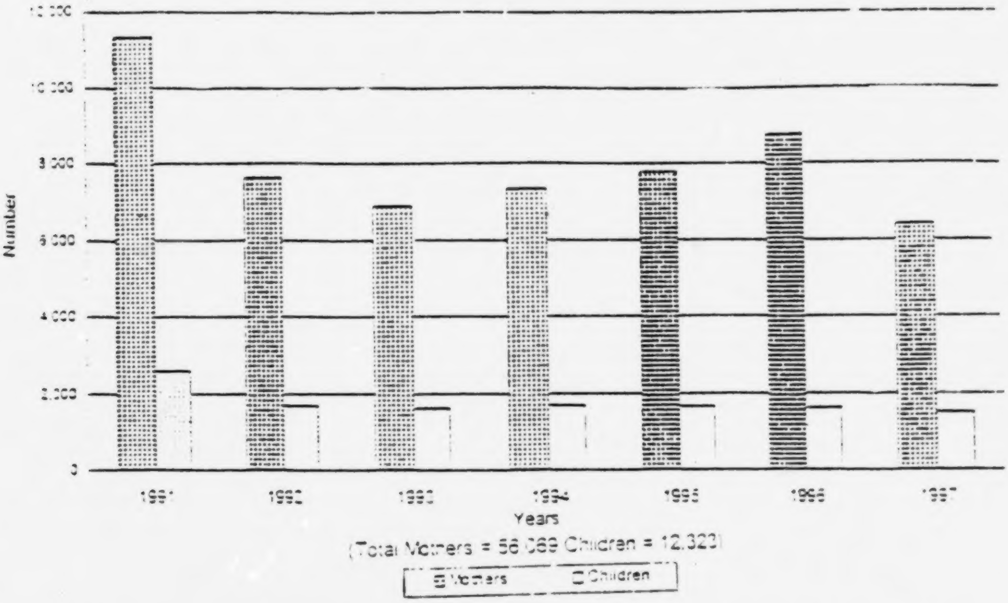
254. There are provisions for the rehabilitation of child offenders within the family system. A child may be rehabilitated while in the custody of the parents. According to the Children and Young Persons Act, children can be released on bond if they are of good character. Parents are in turn required to provide proper protection. Currently, parents are fully involved in the decision to place their children in approved schools for rehabilitation. Counselling takes place before committal. However, it has been observed that in some cases, placing children in approved schools is not always in the best interest of the affected child.

255. The child's opinion is sometimes sought in custody matters. This happens when custody matters are referred to the Children's Department for social investigation reports. This entails direct interaction between the Children's Officer and the affected children in a familiar environment such as the school or home. The officer investigates the situation on the ground, and seeks the child's views on matters affecting the child's relations with the parents. The contents of the report are presented to the court which uses its discretion in deciding the matter in the child's best interest.

3. Existing or planned mechanisms for coordinating policies for children and monitoring of the Convention

256. There are programmes to take care of children whose parents are imprisoned. The Langata Women's Prison, for example, liaises with Newlife, a facility in Langata (Nairobi), to take care of the children of imprisoned mothers. Such children are also admitted to NGOs, voluntary children's homes and State-run children's homes. The aim is to avoid instances where young children are "imprisoned" with their mothers. In come cases, there are attempts to resettle the children with extended families until the mother leaves prison. Figure 6 shows the number of children accompanying their mothers to prison.

Figure 6. Number of children accompanying mothers to prison



257. The Prisons Act (Cap. 90, Laws of Kenya), section 30, state that an infant child of a female prisoner may be permitted to remain in prison until it attains an age of 4 years or until arrangements for its proper care outside prison are concluded.

4. Constraints and achievements

258. The separation or divorce of couples in court does not always favour children. In such cases, children's school, food and housing needs are not adequately met. This has been observed in separation and divorce cases, as in Talaka (Islamic divorce). Children who accompany their mothers through the criminal justice process are exposed to abuse and neglect. Also, children left behind by an imprisoned mother are, more often than not, left to fend for themselves, drop out of school, and are ostracized. Not all custody matters are referred to the Children's Officers. Lack of adequate resources such as personnel, finance and care institutions are a constant constraint. In spite of the Government's commitment to promote community-based care, communities only have limited capacity to take care of children of imprisoned mothers.

C. Article 10. Family reunification

1. Legal and constitutional framework

259. Section 81 of the Constitution of Kenya guarantees freedom of movement. All Kenyans are therefore free to leave or re-enter the country. This is, however, subject to the provisions of the Immigration Act (Cap. 172, Laws of Kenya). These immigration laws, however, do not unduly restrict the rights of families to reunite.

2. Existing or planned mechanisms for coordinating policies for children

260. The Government recognizes the need for families to travel with their children. Children are endorsed on either parent's passport, but the father must give consent before they can be allowed to leave the country.

3. Constraints

261. Immigration laws do not favour children born out of wedlock. Neither do they allow for children travelling with their mothers, or women who intend to join or live with new spouses. For example, when local girls and their foreign husbands are to travel out of the country, the children born before the marriage face many problems. Children born of Kenyan mothers outside the country do not get automatic citizenship. Even those born in Kenya of Kenyan mothers married to foreign husbands are in practice considered "outsiders".

D. Article 18. Parental responsibilities

1. Responsibilities and rights of a parent

262. There are no specific provisions setting out parental responsibilities and rights. Two statutes, namely the Guardianship of Infants Act (Cap. 144, Laws of Kenya) and the Children and Young Persons Act (Cap. 141, Laws of Kenya) provide a legal definition of parental responsibilities and duties.

263. The Children and Young Persons Act recognizes the primary responsibility of a parent in the upbringing of a child. This is supplemented by the Guardianship of Infants Act, which recognizes that a mother has equal rights with the father to apply to court for a decision on any matter affecting a child. In such cases, the court should treat the views of both parents equally. The Adoption Act (Cap. 143, Laws of Kenya) also recognizes the principle of common responsibilities of both parents. It requires that where a couple wishes to adopt a child, both spouses must agree to the application.

264. A court may award custody to one parent, and rights of access to the other. It may also require the maintenance of the child by both parents.

265. Other statutes likes the Matrimonial Causes Act (Cap. 152, Laws of Kenya) and the Subordinate Courts (Separation and Maintenance) Act (Cap. 153, Laws of Kenya) deal with custody and maintenance of children, and the rights and responsibilities over children.

2. Context and implementation

266. The rights of spouses and children depend on the system of marriage which applies to them. In all, there are four different systems of family law which govern marriage, and which the Constitution considers to be equal and protects. The four systems of family law are Islamic law, African customary law, Hindu law, and English law. These systems of family law express the different cultural values existing in Kenya. Some of the personal law is specified in statutes that have universal application and also govern children. For example, the Guardianship of Infants Act (Cap. 144, Laws of Kenya) applies to all children.

267. The roles and responsibilities of family members depend on their age, sex and status within the family. The family's economic background also influences the roles and responsibilities of family members. Among others, marriage confers on the child the right to be maintained by the father and to inherit the father's property. Marriage confers on the mother the right to maintenance and inheritance. Where there is no marriage, the child has no right to be maintained by its father or to inherit his property, unless the father has either recognized expressly or assumed responsibility for the child's support. The mother of such a child has no right to be maintained by the child's father, and is not his heir. Despite the mother's weakened economic position, she is still expected to take care of the child's needs, which may therefore not be met.

268. All four systems distinguish children born outside wedlock from those born in wedlock. Under some customary laws, the child born outside marriage gets material support from the mother, who alone is entitled to custody. The mother's family is also entitled to custody of the child if the mother does not marry the natural father. Where she marries another man, he is entitled to the legal custody of the child, if he pays dowry. Under other customary laws, the natural father of a child born outside marriage is entitled to custody either with or without making a small payment to the mother's family. In the rural areas where family ties and customs are strong, the child born out of wedlock is protected. In urban areas the child is not protected if the parents are not married or cohabiting.

269. Under the English family law, there is a distinction between children born in wedlock and those born out of it. Where a child is born in wedlock, the mother can obtain support from the father in a number of ways. She can obtain necessaries for the child on the husband's credit. She can petition for judicial separation under the Subordinate Courts (Separation and Maintenance) Act (Cap. 153, Laws of Kenya), or ask for custody and maintenance for herself and the children. Under the Matrimonial Causes Act (Cap. 152, Laws of Kenya), she may petition for divorce and request maintenance for herself and the children. If the marriage breaks down and the woman does not want to petition for divorce or judicial separation, she may apply for custody of the children and maintenance for herself and the children under the Guardianship of Infants Act (Cap. 144, Laws of Kenya).

270. Children whose mothers are not married lack adequate protection. Such children may have mothers who fall into one of the following categories:

(a) Mothers who are cohabiting with a man in a stable relationship;

(b) Mothers who can identify the father of their child but are not cohabiting with him. They may or may not be getting financial assistance from the father;

(c) Mothers who cannot identify the father, and will therefore definitely not get any support for the child.

271. For the purposes of the law of succession, the mother in the first category and her children are likely to be treated as wife and children respectively; the common-law presumption of marriage which arises after a long period of cohabitation as husband and wife will most likely apply.

272. Under Islamic family law, the mother is entitled to the custody of children under the age of seven years. Thereafter, the children are placed in the father's custody. In Hanafi law, the mother has the custody of female children until they reach puberty. Under Ithnashari law, the mother has the custody of the child until the age of seven. The position regarding custody of children under Hindu family law is similar to that in English law.

273. The right of the child to the protection of the parents is undermined by the conflict created between Western and African values. English law, which is dominant in Kenya, has always looked down on a marriage that is potentially polygamous. By their nature, traditional African customary and Muslim marriages are potentially polygamous. Hindu customary marriage was also potentially polygamous until 1960 when it was reformed by the Hindu Marriage and Divorce Act (Cap. 157, Laws of Kenya) which abolished polygamy and granted wives the opportunity to end such unions if they so wished.

274. In the early part of this century, Kenyan courts refused to offer relief in cases arising from Muslim marriages. They also declined to offer relief in cases arising out of Hindu marriages, until the Marriage, Divorce and Succession Ordinance was enacted in 1946. Between 1914 and 1963, the courts refused to treat a wife under customary law as a wife for the purposes of the law of evidence. For the greater part of Kenya's history, the law has allowed the conversion of a potentially polygamous marriage into a monogamous one, but not vice versa.

275. For purposes of succession, a woman married in a polygamous marriage is treated as a wife even though her husband was previously, or later, married under a monogamous marriage. Thus, the law of succession appears to treat polygamous and monogamous marriages equally. It also acknowledges the conversion of a polygamous marriage into a monogamous one. It has been argued that the principle should be applied during the lifetime of a man in order to confer the rights of maintenance on "wives" and children who do not enjoy them in his lifetime.

3. Constraints and achievements

276. Cohabitation, which means a man and a woman living together as husband and wife without having undergone a legally recognized marriage, is increasing in Kenya. It has far-reaching consequences for the children involved. Customary law recognizes a marriage through elopement, where a woman and a man cohabit without going through any marriage ceremony.

277. Generally, parental responsibility for biological children depends largely on the relationship between the father and the mother. A child born in wedlock is entitled to better parental care than one born outside wedlock. However, the application of both personal laws and statutory laws, which have different values, has been a constant source of conflict. Some of the legal remedies available to mothers for the maintenance of their children, such as the right to obtain necessaries on the husband's credit, are rarely utilized.

278. The resolution of disputes involving parental responsibility, especially where parties rely on different systems of family law, is provided for in the Guardianship of Infants Act (Cap. 144, Laws of Kenya). Three principles have emerged from the application of the Act: the interests of the child are paramount; the mother and father have equal rights in claiming custody over their children; and the custody of a child of tender years, in the absence of negative or special circumstances, should be given to its mother.

E. Article 19. Protection from abuse and neglect

1. Legal and constitutional context

279. The key statutes on matters relating to violence against children, abuse, neglect and exploitation are the Penal Code (Cap. 63, Laws of Kenya) and the Children and Young Persons Act (Cap. 141, Laws of Kenya).

280. Neglect is closely linked to the duty to provide the basic necessities of life to a child. The Penal Code makes it an offence for a person who is responsible for providing another with the necessities of life to fail to do so. Failure to perform one's duty which causes harm to any person is also an offence under the Penal Code and is punishable by imprisonment.

281. The Children and Young Persons Act contains several protective provisions. It provides penalties for any person who wilfully assaults, ill-treats, neglects, abandons or exposes a child. It is also unlawful to allow a child to be exposed to unnecessary suffering or injury to health. This includes injury to, or loss of, sight, hearing, limbs or organs of the body and any mental derangement. Wilful acts or omissions which cause a child to be in need of protection or discipline are also offences punishable by a fine or imprisonment.

282. A person who is responsible for the custody, charge or care of a child who fails to provide adequate food, clothing, medical aid, or lodging is considered to have neglected the child in a manner likely to cause injury to health.

283. Violence against children, including sexual assault, is also dealt with by the two statutes. However, the Penal Code provides the bulk of the protections. Under the Penal Code, common assaults and assaults causing actual bodily harm on any person are offences.

284. The Penal Code also creates the offences of rape, defilement of girls under 14 years, indecent assaults on females, defilement of girls under 13 and 16 years, detention of boys under 14 years, homosexuality, incest, and living on the earnings of prostitution.

2. Context and implementation

285. Most cases of abuse involve actual physical and bodily harm like burning, cutting, detention in locked rooms, and sexual abuse. Emotional abuse may also result from traumatic experiences. As a result of such abuses, children require a lot of medical and emotional support. Cases of child abuse within the family are sometimes not reported where discipline degenerates to actual abuse, or where parental "authority" demands silence of the victim. The child with a disability is often subjected to abuse within the family. The abuse often takes the form of physical abuse, overprotection and neglect. However, the media are currently highlighting such cases, thus creating awareness. Members of the public have also come forward and reported cases of abuse to the Provincial Children's Officer, Nairobi. In 1994, 90 cases were reported.

286. Besides abuse in families, some caregivers like teachers and workers in institutions are known to abuse children entrusted to their care by administering excessive corporal punishment or through sexual abuse. Bullies in institutions sometimes also abuse newer/younger pupils/students.

287. The wider community also contributes to abuse. Some cultural practices encourage abuse. This happens, for example, with "taboo" children, including children with disabilities. The "taboo" child is neglected for having been born in irregular circumstances, like incestuous relationships, and the disabled for being a "bad omen". Since the community defines these descriptions, it also turns a blind eye to the abuse of such children. The wider community also produces people who sexually abuse children.

288. The death of parents, poverty and family break-ups contribute to child abuse. Orphans are often subjected to abuse. Homeless children, or those on the street, are also victims of physical and sexual abuse.

3. Existing or planned mechanisms for coordinating policies for children and monitoring of the Convention

289. The Children and Young Persons Act creates machinery for intervention where a child or juvenile has been sexually assaulted, or is a member of the same household as a person who has been convicted of such an offence. Such a child is considered to be in need of protection, and can be taken to a place of safety by an authorized officer. There is an elaborate institutional framework aimed at making these provisions effective. The framework involves local authorities, courts, administrative officers (including chiefs and assistant chiefs), police, children's officers, voluntary agencies and the community. Reports can be made to these officers, who are expected to take appropriate action. Furthermore, an appointed local authority and an approved society have the power to receive such a child. This may result from a report by a member of the public.

4. Achievements and constraints

290. Programmes aimed at solving abuse cases include:

(a) A government crisis desk with a hotline to receive reports of child abuse for action;

(b) Peace houses for abused children run by the Child Welfare Society.

291. NGOs have a large input in targeting various categories of children outside family care. Many target particular categories, but since the categories overlap, these NGOs end up caring for children with various problems, including victims of abuse. The National Directory of NGOs dealing with Child Labour (1996) contains 123 such NGOs countrywide. Their main areas of focus are recorded as advocacy (38 per cent), research (19 per cent) and rehabilitation (43 per cent).

292. Various NGOs have formed coalitions and networks to enhance their service delivery for children in need of special protection (CNSP). These include the coalition on child rights and child protection under the umbrella of the ANPPCAN regional office, Nairobi; the Girl Child Network, and the national Child in Need Network. However, there is still no elaborate programme for addressing issues of victims and perpetrators of child abuse.

293. The contribution made by the print and electronic media in highlighting the abuse of children is commendable. It often results in action by the relevant authorities.

294. Unfortunately, there are insufficient programmes addressing children with disabilities. Parents and guardians are sometimes reluctant to pursue cases of abuse against their own children. Newspaper reports record cases where parents are ready to negotiate with their child's abuser in total disregard of their child's rights, but in consideration of other circumstances like "good neighbourliness". Owing to legal complexities, sexual abusers are sometimes discharged by the courts, thus causing fear and uncertainty among parents or guardians who seek redress for their abused children. The Children and Young Persons Act does not provide for direct action by a member of the community in case of abuse. When child abuse takes place within the family and in institutions, intervention from "outsiders" becomes very difficult.

F. Article 20. Protection of children without families

295. Children who have been denied or deprived of their home and the care of their parents may be provided with an alternative home and care under the Adoption Act (Cap. 143, Laws of Kenya), the Children and Young Persons Act (Cap. 141, Laws of Kenya) and the Guardianship of Infants Act (Cap. 144, Laws of Kenya).

296. The Children and Young Persons Act considers a child who is destitute, has no parent or guardian, or has been deserted by such parent or guardian to be in need of protection. Such a child may be taken to a place of safety. This includes any mission, institution, hospital or other suitable place whose owner is willing to accept temporary care of the child. Where no such place is available, a juvenile remand home or police station is considered to be a place of safety.

297. The Act empowers the juvenile court to hear matters concerning the welfare of children. The court may order that a child be removed from the family home, when it is in his/her best interest. The Act also provides for the establishment of homes for orphaned children, and those who have been abandoned.

298. An approved authority or an appointed society may also receive and care for a child or juvenile in need of protection. Such an authority or society is empowered to arrange for foster care of the infant.

299. Similarly the Guardianship of Infants Act gives wide authority to the courts to make the necessary orders. Thus, where an infant has no parent or guardian, any applicant who satisfies the court of his/her ability to exercise proper care may be appointed a guardian of the infant. The Act applies to persons under 18 years of age, but excludes a person who is or has been married.

1. Context and implementation

300. A form of "fostering" around the extended family system takes place informally in many Kenyan families. Relatives take care of cousins, nephews, and nieces needing shelter or education for varying periods of time. One result of such fostering is that the foster child is less attached to the real parents while being just as detached from the foster parents. Where non-relatives are fostered, they may be abused, overworked, or treated as outcasts.

301. The court exercises a wide range of powers in relation to a child without a family who is brought before it for protection. It may commit the child to the care of an appointed local authority, if any. It may also commit the child to an approved society or approved voluntary institution willing to take care of the child. The child can also be placed for a specified period, not exceeding three years, under the supervision of an approved officer, a children's officer, or some other person appointed by the court. The court may commit the child to an approved school if it is in the best interests of the child to do so. The school must be suitable to the needs and attainments of the child.

302. The structural causes of children without families include rapid social, economic, cultural and political transformations. Poverty, increased urbanization, and inadequate legislation and policy have had a negative impact on the family, leaving some children without family protection.

303. The Children and Young Persons Act provides for rules, regulations and registration for children's institutions. Children without family or effective family protection form the bulk of CNSP. The categories of CNSP are numerous. They overlap, and are still in various stages of refinement. Because rural and urban areas are distinct socially, physically, economically and politically, they produce distinct kinds of children in need of special protection.

304. A survey of children in especially difficult circumstances identifies 16 different categories of CNSP (see table 8). The data presented in table 8 show that a majority (36.8 per cent) of urban CNSP are street children while orphaned children (7.5 per cent) are the majority of rural CNSP. The leading CNSP categories are street children, orphaned children excluding AIDS orphans, domestic workers and abandoned and neglected children. Except for

street children, there are no great disparities between rural and urban areas in the distribution of children in the other categories. However, rural and urban areas are distinct. There are more nomadic children (4.2 per cent) in rural areas compared to 1.1 per cent in urban areas. There are also more street children in urban than in rural areas. There are more adolescent parents in rural areas (3.1 per cent), and more orphaned children in rural areas (7.5 per cent) compared to 4.3 per cent in urban areas. Overall, the data indicate that the place of residence does not determine the category a child falls into. However, the likelihood of falling into a particular category is increased by residence in either rural or urban areas.

Table 8. Percentage distribution of CNSP by rural-urban differences

CNSP category	Rural children as a % of total CNSP	% of category as proportion of total rural CNSP	Urban children as % of CNSP	% of category as proportion of total urban CNSP
Street child	4.7	13.8	36.8	54.8
Adolescent mother/father	3.1	9.2	1.4	2.2
Child bride	0.9	2.7	0.3	0.6
Drug user/trafficker	0.3	0.9	0.6	1.0
Child labourer	1.7	5.1	2.8	4.0
Domestic worker	3.1	9.4	4.7	7.1
Destitute/abandoned/neglected child	4.3	13.0	5.3	8.0
Child of imprisoned mother	0.6	1.3	2.3	3.4
Child in armed conflict/displaced child	0.2	0.6	0.9	1.4
Child prostitute	1.1	3.4	3.2	5.0
Child infected/affected by AIDS	0.2	0.5	0.2	0.3
AIDS orphan	0.6	1.8	0.2	0.3
Orphaned child	7.5	22.1	4.3	6.7
Child physically/mentally challenged	0.9	0.3	0.5	0.8
Nomadic child	4.2	12.3	1.1	1.6
Delinquent child	0.4	1.1	1.6	2.4
Total	33.8	100	66.2	100

Source: GOK/Ministry of Home Affairs and Natural Heritage. UNICEF Kenya Country Office. A survey of children in especially difficult circumstances (CEDC) in Kenya, 1997.

305. The survey of children in especially difficult circumstances (1997) covered 13 of Kenya's 67 districts. It identified 109,767 CNSP. It further showed that a large number of CNSP were being denied the rights to survival, development and protection required by the Convention on the Rights of the Child. Between 20 per cent and 75 per cent of CNSP lacked access to critical amenities of child protection and development. Half did not live with their parents and received no parental care, 82.7 per cent participated in child labour, 55.2 per cent lacked access to shelter, while 50 per cent ate only once or twice a day.

306. Young girls have been identified as mothers of many abandoned children in Kenya. A 1993 AMREF study found that the mean age of first coitus is 14.8 years. About 55 per cent of adolescents became mothers before the age of 20, while 6 per cent of girls have had sex before the age of 10 (KDHS, 1993).

307. Many teenagers have unwanted pregnancies, which cause crises in their lives. Such crises include dropping out of school, running away from home, experiencing health problems and being denied access to their fathers' property. Furthermore, children of adolescent unmarried mothers are considered to be illegitimate throughout life.

2. Achievements and constraints

308. Placing children in institutions is a popular way of dealing with children without a family or effective family protection in Kenya. This raises the issue of the quality of protection. Placing children in institutions can deprive them of family protection, depending on the length of the stay, which in some cases could be up to the age of 18. These institutions are also expensive to run. They also promote dependency and deprive the child of his or her sense of individual responsibility.

309. The fostering of children is mostly undertaken by childless couples. When children are fostered for long periods, their rights are not ensured unless arrangements are made for their adoption.

310. There are insufficient programmes by both the Government and NGOs to address issues of children with disabilities and the girl child. However, the activities of the Forum for the Advancement of Women's Education and Africa Inland Church Girls School in Kajiado in the area of girl-child education have been noted.

311. The registration and supervision of voluntary NGO programmes is not coordinated. Some are registered under the Societies Act (Cap. 108, Laws of Kenya), others by the Department of Culture and Social Services, and yet others by the NGO Bureau. There is also provision for registration under the Children and Young Person's Act (Cap. 141, Laws of Kenya), which is administered by the Children's Department.

312. While police stations are places of safety, they can expose children to abuse because no specific rooms are set aside for them. Children are usually held in cells designated for women. Monitoring is further hampered by the small number of children's officers. There are currently slightly under 150 such officers for the whole country. The recent study on CNSP in 13 districts is a step in the right direction towards better programming for children without families. The available child-care institutions for children outside the home and community do not address the root causes of CNSP like poverty. Government institutions are associated with only curative services. They respond mainly to negative behaviour or to orphans. The burden of supporting the child falls on the mother where she is not married to the father.

313. NGO directories listing NGOs dealing with children in need of special protection give a clearer picture of the organizations running programmes for CNSP than has been the case previously. These include the Nairobi Networker, the Christian Workers Directory, the KAACR

Directory of agencies working with children in Kenya and the NGO Directory (1998) of the National Council of NGOs. However, the fact that many children (over 28 per cent) do not seem to know where to go for help is a point of concern.

G. Article 21. Adoption

314. The Adoption Act (Cap. 143, Laws of Kenya) contains various provisions regarding adoption of children in Kenya and elsewhere. These provisions are meant to ensure the best interests of the child. The Act allows for the adoption of children who are abandoned or neglected. It provides that when making an adoption order the court should be satisfied that it is in the best interest of the child.

315. Section 22 limits the right to make adoption arrangements to those societies approved and appointed as adoption societies. In the absence of special circumstances, the applicant must be of the same race as the child. An overseas adoption is recognized if it is made by a court in a Commonwealth country. It is also recognized where an adoptive parent acquires custody rights that are superior to those of the parents, and rights over any property the child may have.

1. Requirements for a concluded adoption matter

316. Once the adoption has been finalized, the registration office requires a copy of the court adoption order and adoption certificate. If there are no queries about the adoption, the principal immigration officer issues a travel document or passport within 21 days. However, where adoption is still pending in court, as many documents as possible to support the application must be produced. The required documents are:

(a) An attachment agreement between the children's home, that is the guardian and the adopters, signed in the presence of an advocate;

(b) A juvenile court order committing the infant to the care and protection of a children's home or a fit person;

(c) A letter from the social worker of a hospital where the child was born or brought to after the mother absconded, giving a brief history of the child, or a police abstract where necessary;

(d) The child's birth certificate (if any). In case a child does not have a birth certificate, the applicant should state the date of birth as shown in the hospital letter or committal order by the juvenile court. The child's name given by the home must be indicated, because most of these children are referred to as unknown African babies/children;

(e) A letter from the children's home giving the name of the applicants/adopters and confirming the position of the matter in court and when it is to be concluded;

(f) A letter from the advocates/lawyers for the applicants/adopters, confirming the position of the matter in court and when it is to be concluded;

(g) The infant/child's passport/travel documents, application forms, and a security bond of K Sh 60,000;

(h) One of the applicants/adoptive parents has to appear in person before the immigration officer to explain the reason for travel, the destination, the file number in the Immigration Department, their citizenship, the period they have been in Kenya, and why they cannot wait for the court to conclude the matter.

This process takes between two and three months, because the documents have to be approved by senior immigration officers.

317. Currently, the only officially approved society is the Child Welfare Society of Kenya. The Society has well-established procedures. These involve interviewing the adoptive parents to gather as much information from them as possible. The procedures also involve the presentation of all information before adoption case committees. If the case committee is satisfied that the applicant is suitable, he/she is allowed to take the child on a fostering basis. Before an adoption order is made, the child should stay for at least three months on a fostering basis with the adoptive parent. The case is then taken before the High Court for an adoption order. The adoption order is irrevocable. It transfers parental rights from the natural to the adoptive parents. It gives the child a permanent home.

318. The Child Welfare Society of Kenya recorded an average of 143 applications per annum from prospective adopters between 1991 and 1998.

319. Children who can benefit from adoption include those whose mothers give them up by signing consent forms six weeks after delivery. They also include babies who are abandoned at birth or for six consecutive months. These include babies abandoned in hospitals, or those who are considered to be taboo children such as those born out of incestuous relationships.

2. Achievements and constraints

320. Because there is only one official adoption agency, it is possible to circumvent it through private adoptions which, though legal, may not cater for the best interests of the child. They are also inadequate given the increasing number of children in need of adoptive care.

321. Adoptions are accepted up to a certain level in Kenya. Therefore, adoption can be used as an alternative means of catering for the welfare of children without families. It is preferable to institutionalizing them and denying them the love and bonding only possible in a family setting.

322. The Adoption Act facilitates the adoption of homeless children and regulates adoption societies. Some adoptive parents prefer not to tell their children that they are adopted. They prefer to make such children believe that they are their natural children. This has caused crises in the lives of such children once they find out their true status from neighbours, school, or the adoption certificate. There are no proper follow-up mechanisms to ensure the safety of children awaiting adoption.

H. Article 25. Periodic review of placement

1. Legal and constitutional context

323. The Children and Young Persons Act establishes the post of Chief Inspector, whose role is to inspect voluntary institutions and places of safety where children in need of care have been placed. The Chief Inspector is required to examine the management of the institutions and the treatment of the children who are placed there. It is an offence to obstruct the Chief Inspector's duties.

2. Context and implementation

324. Children placed for safety in an approved school are entitled to leave of absence. This is determined by the manager of the approved school, with the consent of the Director of Children's Services.

325. The Director of Children's Services may release a child from an approved school on licence to live with parents or a fit person willing to receive and take charge of such a child.

326. If satisfied that a person who has been ordered to be committed to an approved school should not remain subject to the order, the Director of Children's Services may revoke the committal order in writing.

327. There is also provision for transfer from a junior to a senior approved school, and for supervision after release for a duration of two years. In cases of frequent escapees or persistent absconders, or those who have bad influences on other children in the approved school, and are under 16 years, the committal may be increased by a period not exceeding six months. A child who is over 15 years is sent to a borstal institution.

328. The Probation Department has a case committee to review cases of probationers aged below 18 years. Some NGOs have case committees that review children's cases. These include the Child Welfare Society of Kenya and Dr. Barnado's Children's Home.

3. Achievements and constraints

329. After-care services for children released from government institutions are inadequate owing to lack of resources (both financial and trained personnel). There is no stated policy for NGOs on periodic review of children placed under their care, and there is lack of training on the need for periodic review of placement as an integral part of rehabilitation.

330. Certain measures have been taken to make the principles and provisions of the Convention on the Rights of the Child widely known. These include:

(a) Electronic and print media;

(b) Seminars;

(c) Barazas (public meetings in localities);

(d) Familiarization tours to successful regions.

I. Article 11. Illicit transfer and non-return of children abroad

331. The Constitution of Kenya contains provisions against slavery. It is unlawful to transfer children out of Kenya by any other means except those set out in the relevant statutes like the Adoption Act (Cap. 143, Laws of Kenya). The Penal Code also makes it an offence for a person to import, export, remove, buy or sell another person as a slave. It further prescribes penalties for persons guilty of kidnapping people in or outside Kenya.

VII. BASIC HEALTH AND WELFARE: ARTICLES 6, 18 (PARAS. 1-3), 23, 24, 26, 27

A. Article 6. Right to life, survival and development

1. Legal and policy framework

332. The Constitution of Kenya states that all persons are entitled to the fundamental right to life. In promoting this right, the Government, through the Ministry of Health, has undertaken to prevent deaths caused by diseases. It also provides for universal primary education for survival and development, overseen by the Ministry of Education. The Ministry of Home Affairs, National Heritage, Culture and Social Services has the responsibility for the general welfare of the child.

333. The Public Health Act (Cap. 242, Laws of Kenya) has created a department which is in charge of monitoring disease epidemics and their management. It is also concerned with providing preventive, promotive and curative health services to ensure survival and development.

334. In addition, Kenya's Health Policy Framework (1994) emphasizes that the Kenya Government, through the Ministry of Health, is committed to ensuring that all Kenyans have access to health services. This will promote their well-being, while improving and sustaining their health. Because of scarce resources, the Ministry targets resources to those conditions and diseases that cause the most deaths. This is achieved through promotive and preventive health-care services. The Ministry ensures the provision of cost-effective essential public health services, HIV/AIDS control, and the control of Kenya's rapidly growing population.

2. Context

335. The infant mortality rate (IMR) is currently estimated at 62/1,000 live births. The under-five mortality rate stands at 96/1,000 live births. Most of the morbidity- and mortality-causing diseases are preventable. These could have been contained and sustained by high immunization coverage.

336. Kenya has moderate nutrition problems. The low birth weight prevalence is 17 per cent, but has regional variations. Stunting, a feature of chronic undernutrition, is the most prevalent result of malnutrition. The current national rate is 36 per cent (1996-CBS National Nutrition Survey). The prevalence of underweight among under-fives is also high at 23 per cent (CBS, 1996). This is slightly lower than the global figure of 29 per cent (SCN, 1997). Geographical diversity also exists in prevalence and causes. The figures on malnutrition do not indicate the nutritional status of street children and children with disabilities.

337. There are cultural practices that contribute to malnutrition. These include superstitions about eating certain foods which have high nutritional value. In Coast Province, for instance, some communities do not feed pregnant mothers on eggs because it is believed that the infants will be born bald, and that children fed on eggs will steal eggs and chickens when they grow up. An important cultural practice in Nyanza Province concerns food distribution within the family where preference is given to boys. Other causes of malnutrition include households without safe drinking water or toilet facilities and high population density.

338. The prevalence of nutritional anaemia is high, especially in women and young children. Coast Province is the most severely affected. The lake region of Nyanza has a rate of 25-30 per cent. The same regions are prone to worm infestation and malaria. Data from localized studies indicate that 33 per cent of Kenyan children are anaemic.

339. Breast-feeding rates also vary within regions. Nationally, almost all (97 per cent) children are breast-fed soon after birth. The rates of exclusive breast-feeding at four months drop drastically to less than 20 per cent. The Kenyan mother breast-feeds for an average of 16 months, with exclusive breast-feeding for only about 2.5 months for the majority.

340. Some of the reasons for low exclusive breast-feeding rates include mothers having to return to work, where they are not able to take their babies with them. The rate of exclusive breast-feeding is higher in rural than in urban areas. Rural mothers have more time with their babies. Urban mothers have to leave their babies at home because of the short maternity leave and the problems of travelling long distances to work. The rate of exclusive breast-feeding is 34 per cent in rural areas, compared to 22 per cent in urban areas.

341. The frequency of breast-feeding should be increased during illness, but in practice some mothers stop breast-feeding, for example when the children get diarrhoea. The early introduction of complementary foods in infants' diet exposes them to conditions that cause disease before they develop immunity. This is likely to result in infections and increased risk of diarrhoea. Repeated infections have an impact on the nutritional status of infants and children.

342. Maternal deaths currently stand at 365 per 100,000 live births. This is attributed to post-partum haemorrhage, hypertensive disorders and maternal infections. Regional variations exist. Nyanza Province accounts for 24 per cent of all recorded maternal deaths, followed by Western Province at 23 per cent and Eastern Province 21 per cent (MOH, 1997).

343. HIV/AIDS is a threat to the survival and development of children. In 1998, it was estimated that the number of children affected by AIDS stood at 600,000. The figure is expected to rise to 1.2 million by the year 2005. The growing number of AIDS orphans places a heavy

burden on families and communities. It also affects the Government's ability to respond to the needs of such children. The health sector is particularly overburdened by the AIDS epidemic. Besides the huge increase in health expenditure, the dependency ratio has risen and productivity levels have dropped. This has resulted in a reduction in the GDP. These factors, together with the legal and ethical issues surrounding AIDS have presented major development challenges. Government efforts are supplemented by organizations like UNAIDS, the Family Planning Association of Kenya (FPAK), the National AIDS Consortium, and Marie Stopes clinics.

344. As part of the effort to reduce the transmission of HIV and reduce the impact of AIDS, the Government's policy is to promote and strengthen non-institutional care of people with AIDS. There is also a policy shift regarding breast-feeding of infants, in view of the risks of transmission of HIV from mother to child through breast milk. Alternative ways of infant feeding will be vigorously pursued through education, counselling and research in cases where babies of HIV-infected mothers are identified.

345. Both the Government and NGOs have made deliberate efforts to promote behaviour change with respect to the transmission of HIV. The type of communications used include widespread use of billboards in local vernacular languages and Kiswahili, posters and pamphlets in English, Kiswahili and local languages and the electronic and print media. Poems, songs, and drama have also been used in different languages. No efforts, however, have been made to translate these into Braille or sign language for those with disabilities.

3. Constraints

346. The malnutrition figures do not indicate the nutritional status of children in need of special protection, street children and children with disability. Nutrition status data for children 5-18 years are generally lacking.

347. The fact that mothers have to go back to work after 60 days' maternity leave and the introduction of other foods before six months of age contribute to the low rates of exclusive breast-feeding, and consequently expose children to infections.

348. In the area of HIV and change of behaviour, children and people with disabilities are not covered by the types of communication already in use. Sign language for the deaf and Braille and audio cassettes for the blind are necessary.

B. Article 23. Children with disabilities

1. Legal and policy framework

349. The Constitution of Kenya is silent on discrimination on the basis of disability. This has been interpreted by some to mean that it is lawful to discriminate against people with disabilities. There is also no progressive legislation in Kenya allowing differential treatment for the disabled.

350. The result of this is that the policies on children and people with disabilities are not concrete. However, the Attorney-General set up a task force to review laws relating to people with disabilities. The report of the task force and a draft bill have been handed over to the

Attorney-General. It has been noted that the draft bill contains gaps on children with disabilities but discussions on this are going on. The proposed Children Bill also contains some provisions on children with disabilities.

351. The Ministry of Education has a policy on special education which takes into account community-based rehabilitation for the disabled. The Ministry of Home Affairs also has a policy on rehabilitation of people with disabilities; however, its implementation has not been very encouraging.

352. A notable development was the inauguration of the National Fund for the Disabled. This is a Government-funded mechanism for the distribution of financial resources and equipment to improve the welfare of the disabled.

2. Status of education, health and culture for people with disabilities

353. Like the violation of the rights of minority groups, the violation of the rights of children with disabilities by parents, teachers, administration, policy-makers and the community has persisted over the years. This has mainly resulted from ignorance, attitudes, culture and poverty. The general public, policy formulators and technocrats are ignorant about the unique needs and aspirations of people with disabilities. Similarly, existing policies and legislation do not take into account the needs or aspirations of people with disabilities. This has made it difficult for people with disabilities to have access to equal opportunities in education, training, employment, health and social services. Eventually, the lack of access to viable opportunities has reduced most disabled people to poverty.

354. The campaigns to control various preventive diseases like polio and measles are also steps to control the various types of handicaps. Kenya offers vaccines against such diseases free of charge. It also disseminates information about early symptoms of these diseases.

355. According to the World Health Organization (WHO), the disabled comprise 10 per cent of any population. This means that Kenya has approximately 3 million disabled persons and 600,000 children under 5 years with disability. It is necessary to have a comprehensive health-care programme to address the needs of people and children with disability. These programmes should include the training and setting-up of specialized facilities.

356. Currently there is a community-based rehabilitation programme targeting all groups of people with disabilities. It is functional in some districts, namely Siaya Kisumu, Nandi, Machakos, Kajiado, Tharaka Nithi, Mbeere, Laikipia and Kibwezi. It is expected that the programme will be extended to other districts.

357. The Kenya Society for the Blind, the Government, and Sight Savers carry out preventive outreach programmes and provide free medication in some parts of the country. The Association for the Physically Disabled of Kenya carries out health activities in Mombasa and Nairobi. These are, however, inadequate. Physiotherapy, counselling of parents and referral of the disabled children to schools are done in collaboration with the Ministry of Health. The Kenya Society for Deaf Children and the Society for the Deaf carry out campaigns for hearing aids.

However, since the hearing equipment is expensive, there is a need for government subsidies to enable the deaf to have access to them. There is also a crucial need for the interpretation of sign language.

358. With respect to recreation for children with disabilities, the Ministry of Home Affairs, Culture and Social Services has played a leading role in helping children with disabilities to participate in sports locally and internationally. Mentally challenged children have participated in the Special Olympics and won medals. This boosts their morale because they are not able to perform well academically. Visually impaired children have also excelled in sports such as the high jump, shot putt and 100-metre races. All children with different categories of disability may compete in drama and music festivals.

359. Other agencies involved in the provision of services for people with disabilities include the Ministries of Education, Agriculture, Home Affairs, National Heritage, Culture and Social Services, the Office of the President, NGOs such as AMREF, religious organizations and Lions Clubs.

3. Constraints

360. There is a low enrolment of children with disability in schools owing to lack of training aids, the high cost of training and the stigma associated with disability. The girl child with disability is especially affected. There are also inadequate data on the number of children and people with disabilities.

C. Article 24. Health and health services

1. Legal and policy framework

361. The legal provisions that relate to health delivery include the Public Health Act (Cap. 242, Laws of Kenya), the Local Government Act (Cap. 265, Laws of Kenya) and the Food, Drugs and Chemical Substances Act (Cap. 254, Laws of Kenya). These were in force before the ratification of the Convention on the Rights of the Child. Therefore, they do not specifically protect children.

362. The Government is committed to improving the health of the population. This is stated in successive National Development Plans and government policy documents such as the Kenya Health Policy Framework (KHPF). These policies form the bases for the planning and implementation of health-care services. The current health policy revolves around two critical issues. The first is the delivery of a basic package of quality health services to a growing population. The other is the financing and management of services in a way that guarantees availability, accessibility and affordability to the most vulnerable groups. Since 1994, the Government has embarked on far-reaching reforms in the health sector. These focus mainly on the financing of health-care delivery, community participation and intersectoral collaboration. The reforms emphasize preventive and promotive health services and the treatment of common diseases.

363. The National Plan of Action for Nutrition (NPAN) has addressed the implementation of world global goals. The Plan aims to incorporate global nutrition objectives into national development programmes and policies. It also aims to develop specific nutrition interventions and generate information from community-based actions. The eventual aim is nutritional assessment and the implementation of appropriate interventions. The Government has also implemented policies on specific nutrition issues. These include universal salt iodization, iron supplements for pregnant mothers, vitamin A supplements for children under 5 years and lactating mothers, and the implementation of the Kenya Code of Marketing Breast Milk Substitutes.

364. By September 1997, over 76,000 AIDS cases had been reported and 1.3 million Kenyans were estimated to be infected with HIV which causes AIDS. Of this number, an estimated 77,950 were children. Indeed, one of the major consequences of AIDS in Kenya is that it has reduced life expectancy and increased the incidence of illness and death among children.

365. Adult deaths due to AIDS have increased the number of AIDS orphans and child-headed households. In 1996, it was estimated that the number of children affected by AIDS stood at 300,000 and this figure was expected to double by the year 2000. The growing number of AIDS orphans has imposed a heavy burden on families and communities and on the Government's ability to respond to the needs of these children. At the same time, the extended family network, which would traditionally have been relied upon to support the orphans, has been gradually eroded by urbanization, poverty and other socio-economic factors.

366. Kenya has no direct legal provisions regarding the AIDS epidemic. However, the existing laws related to health care, the rights to survival, protection and participation and the provision of basic needs indirectly address the problem. But these are limited in scope in the context of the legal, ethical, socio-cultural and economic factors resulting from the spread of HIV. In response to these, Sessional Paper No. 4 of 1997 on AIDS in Kenya spells out the direction the Government proposes to take. This includes the enactment and enforcement of relevant laws. That Sessional Paper addresses both the socio-cultural issues that facilitate the transmission of HIV and cultural practices that support prevention and care.

2. Context

367. Children comprise more than 33 per cent of Kenya's population. They are the future consumers and productive human resources. However, there is no codified child welfare policy (National Development Plan 1997-2001).

368. Currently, the health care delivery system comprises a total of 3,500 health facilities. These include 209 hospitals, 257 health centres and 2,764 health sub-centres, dispensaries and clinics. While the Government and NGOs have more than 83 per cent of their facilities in rural areas, approximately half of the private sector facilities are located in urban areas. Thirty-eight per cent of the hospitals are also located in urban areas. In contrast, over 80 per cent of health centres and dispensaries are in rural areas. Access to health

facilities has improved: 42 per cent of the population resides within 4 km of a health facility and 75 per cent within 8 km. However, this accessibility is limited by the cost-sharing policy that has raised the cost of health services.

369. In 1992, NGOs provided about 40 per cent of the health services. Currently, NGOs and missions operate 20 per cent of the health facilities in Kenya. Of the approximately 80,000 health personnel in the country, the Ministry of Health provides 55,000 (69 per cent). The rest are provided by NGOs and missions. The proportion of health services provided by this sector is not currently available. Research therefore needs to be carried out to establish the ratio of these health services. The NGOs have been involved in curative and primary health-care services, maternal, child and family planning programmes, and in community-based distribution of contraceptives.

370. Street children in Nairobi go for those health services supported by the Red Crescent, which is a private agency. An average of 20 street children are treated daily. Some of the most common ailments include STDs, ARIs, skin rashes and injuries. Street mothers also attend antenatal clinics. The street communities contribute money for the delivery of their babies in hospitals.

371. Community-based interventions are emphasized as part of primary health care. They include health promotion, disease control, sanitation and simple curative health care. As part of the Health Policy Framework, the Government has restructured the health management system in order to decentralize decision-making in the health sector to the district level. Communities have major roles to play in decision-making, generating resources, and implementing and supervising health programmes in partnership with health providers. The increased involvement of communities include their participation as community health workers (CHW), traditional birth attendants (TBAs), and traditional healers. They are supported through the primary health care (PHC) support network which brings together health extension workers and the population. The village health committees (VHCs) are formed before PHC activities are started in the communities. Their role is to oversee the activities carried out. The information collected is discussed by the VHC to enable it to implement appropriate interventions. The VHC oversees the duties of the community health worker. A health worker from the nearest health facility technically supervises the community health worker. Currently, there are 300 VHCs in community-based health care. The Government recognizes the role that the traditional healers play in the health-care system. Research on herbal medicine is currently being carried out at the Kenya Medical Research Institute (KEMRI), based in Nairobi.

372. A review of the food policy to address nutrition issues has been undertaken, but a further review is necessary. When finalized, this policy will improve and promote the nutritional status of the population to a level that is acceptable and consistent with good health. The review will include emphasis on subsistence crops as opposed to cash crops. It will also emphasize drought-resistant crops and the need for proper storage of these foods at the community level.

373. The Government has established a number of programmes that are in various stages of implementation. These address conditions and diseases that greatly affected children and women. They include: PHC approaches, MCH/family planning and EPI.

374. The PHC approach is central to the operation of these programmes. Its major focus is on decentralization, integration and community participation. The interventions by the Ministry of Health emphasize preventive, promotive and curative programmes. Adolescent health programmes lay emphasis on the girl child, because of complications carried forward into adulthood.

375. There are significant efforts by the Government, with support from WHO and UNICEF, to control diarrhoeal diseases. The annual incidence of diarrhoea is 3.5 to 4.6 episodes per child, and it is among the top five killers of children. The control of diarrhoeal diseases programme (CDD) is currently being implemented countrywide. It aims at reducing mortality and morbidity through improved case management using oral rehydration therapy (ORI). Proportional deaths from diarrhoea have been reduced from 14 to 9 per cent of all reported illnesses. The extensive training of health workers and the establishment of ORT corners at health facilities have made this possible countrywide. The use of ORT for the treatment of dehydration caused by diarrhoea stands at a high 76 per cent (GOK, 1994).

376. The ARI programme has recently been integrated with CDD and is currently being implemented in 17 districts. However, the ARI component has yet to show an impact, because it has been implemented over a shorter period.

377. The main objective of the Kenya Expanded Programme on Immunization (KEPI), is to reduce deaths and illness due to childhood immunizable diseases. It has been as positive in its impact as any successful health programme can be. Knowledge, attitudes and practices on immunization among child caretakers are estimated at 90 per cent. Access to immunization is equally high. Ninety-six per cent of children 12-23 months old have access to existing health infrastructure, with minimal urban-rural differences. Vaccine-preventable diseases have declined steadily in incidence and prevalence. This is a result of sustaining a high immunization coverage of more than 75 per cent for all the antigens in the past five years. Two consecutive National Immunization Programmes in 1996 and 1997 recorded a success rate of 80 per cent. This shows that the eradication of poliomyelitis by the year 2000 is feasible. KEPI has recently embarked on disease eradication/elimination programmes initially targeting poliomyelitis and neonatal tetanus, and reduction in illnesses and deaths from measles.

378. Malaria is a major public health problem. Its main impact is on children under 5 years and pregnant women, particularly those in their first pregnancies.

379. Malaria in pregnancy often results in low birth weight babies. Malaria accounts for 30-50 per cent of childhood illness. The National Malaria Control Programme aims at reducing death and illness from malaria through effective case management, personal protection and vector control. At community level, malaria control activities are integrated with those of other disease control within the Bamako Initiative.

380. Malaria is now widespread throughout the country even in areas thought to be malaria-free zones. This is due to environmental pollution which creates suitable mosquito breeding areas. There is also a high mobility of people from malaria-endemic to non-endemic areas.

381. Reproductive health is one of the programmes of primary health care. Some of the ongoing projects include provision of contraceptives, training of health-care providers, safe motherhood initiative, family planning logistics, and training community health workers on community-based contraceptive distribution. The current rate of contraceptive use is 33 per cent, while knowledge about contraceptives is 96 per cent.

382. Adolescent issues have not been addressed fully. Existing national health programmes focus mainly on children under 5 years. They have excluded a large number of children 5-18. This has led to their being exposed to all forms of injuries owing to lack of protective skills and services. The lack of youth-friendly health services threatens the development of the youth and their survival because some of them will be victims of early pregnancy, depression, drug addiction and other social ills. Everyone has a right to health and a responsibility to ensure the fulfilment of this right. This calls for empowerment, particularly in decision-making and the control of resources.

383. The participation of children in promoting their own health is equally important. Child to child approaches have proved an effective channel for health education at the community level. Children proved to be effective communicators in an initiative undertaken to improve measles immunization in Kisumu District. This concept can be extended to include adolescents as peer educators, particularly in sensitive areas such as STDs and substance abuse.

384. Early teenage fertility and child-bearing has diverse negative demographic, socio-economic and socio-cultural consequences. Teenage mothers suffer most from severe complications during delivery. Their socio-economic advancement, educational attainment and accessibility to better job opportunities are also impeded. At the social level, they are more likely to become outcasts and be relegated to ineffective roles, especially if they are unmarried. Therefore, they should be given access to information to help them make informed choices.

385. Seventeen per cent of teenagers aged 15-19 are mothers, while 4 per cent are pregnant with their first child. This shows a decline compared to five years ago when the figure stood at 21 per cent. Those residing in rural areas, those with less than secondary school educations and those residing in Nyanza and Western Provinces are also more likely to have begun child-bearing (KDHS, 1993).

386. Family life education has been addressed to some extent in the primary school home science curriculum. In secondary schools it has been addressed during guidance and counselling, social ethics and biology. Kenyan cultures do not allow people to talk openly about sex. Many religious groups also see it as something that should not be addressed as it promotes immorality.

387. In some communities, the cultural practice of female genital mutilation (FGM) is seen as a necessary rite of passage. It is considered to be an initiation into womanhood for girls. FGM has negative health implications for girls. Leading NGOs on the advocacy of the human rights of women have extensively created awareness of FGM. This has, for example, been done in the Kisii community, which has improvised the rite of passage without necessarily carrying out the operation. This has met with a lot of resistance from leaders, including women, who are the custodians of women's heritage.

388. In a study carried out by Maendeleo Ya Wanawake Organization, it was found that 73.5 per cent of the women in Meru, 98.0 per cent in Kisii, 96.0 per cent in Narok and 91.3 per cent in Samburu were circumcised. Of these, 50 per cent were circumcised at 10-15 years. In Kisii, over 50 per cent are circumcised before the age of 10 years. The most common reason given for this ritual was to support "good tradition".

389. As a surgical operation, circumcision has negative effects on girls. Post-operative complications are even more likely to occur because the operation is usually performed under unhygienic conditions and without sterile equipment. It is also performed by untrained people ignorant of anatomy, who employ different local substances to heal the wound and stop bleeding. FGM causes immediate and long-term medical and other complications. Among these are haemorrhage, infection, scarring, painful intercourse, urine retention and difficult childbirth.

390. The Safe Motherhood Initiative (SMI) aims at improving maternal reproductive health and the reduction of maternal pre-natal death. It emphasizes the provision of services to women during pregnancy, delivery and post-delivery. The programme provides training to health workers on the provision of these services, and on emergency obstetric care. Ninety-five per cent of mothers receive antenatal care, 72 per cent from traditional birth attendants and 4 per cent from doctors. Of those receiving care from traditional birth attendants, 23 per cent receive tetanus toxoid while 90 per cent getting care from doctors receive it during the antenatal visits (KDHS, 1993). Birth registration is facilitated by health facilities which notify births. The child welfare card is a recognized document for registration.

391. The Bamako Initiative was initiated in Kenya in 1989 to accelerate the implementation of PHC. It is implemented in nearly 300 communities in 25 out of the 67 districts. The focus of the Initiative is the community pharmacy around which other health-care activities are centred. Communities are mobilized to implement promotive and preventive health activities alongside community pharmacies. Development activities are also implemented within the framework of the Initiative.

392. The supplementing of vitamin A through capsules to lactating mothers and children under 5 is going on well. It is integrated with immunization to minimize lost opportunities. The Ministries of Education and Health have begun supplementing vitamin A to pre-school children at the early childhood development centres (ECDC).

393. Malaria and respiratory infection accounts for almost 50 per cent of all reported diagnoses in government health facilities. Intestinal parasitic infections and diarrhoea increase this to almost 60 per cent. Chronic overcrowding in some slums leads to serious health problems. Up to 80 per cent of slum households have one room for all household functions. Sleeping in shifts is common for many slum dwellers. In urban areas, the proportion of those with access to safe drinking water is as high as 92 per cent. Access in urban slums was 53 per cent, and 42 per cent in rural areas. The national average was placed at 55 per cent in 1992. Regional variations indicate that Nyanza has the least access in terms of piped water at 9 per cent. This is even lower at the district level, with 2 per cent in Siaya. Even in the urban areas the cost of water is as high as K Sh 20 for a 20-litre can. Some people get water from unsafe sources such as dams and sewers.

3. Other health sector challenges

394. The health sector has not been able to expand rapidly to ensure adequate coverage, accessibility and an acceptable quality of health services. The low levels of incremental financial resources, inefficient utilization of existing resources, the emergence of new diseases and the growing appreciation of modern health care have made the situation worse. The share of government recurrent expenditure allocated to health is projected to be 9.6 per cent in 1996/97, up from 9.26 in 1979/80. Per capita expenditures have steadily declined. Seventy per cent of the current health budget is tied to staff emoluments, leaving only 30 per cent for supplies.

395. The existing control mechanisms are organized to cater for different categories of medical practitioners. The Clinical Officers (Training, Registration and Licensing) Act (Cap. 260, Laws of Kenya) requires that clinical officers work for 10 years before going into private practice. Their premises are also inspected by the local medical health officer before the Clinical Officers Council approves the clinic for operation. The Nurses Act (Cap. 257), Laws of Kenya) does not allow nurses to go into private practice, but this is under review. Pending this change, nurses have opened clinics with the approval of the Director of Medical Services through the Nursing Council. They are also expected to have worked for 10 years. Dental medical officers and pharmacists are expected to work for three years before leaving the public service. The application for a licence is approved by the Medical Practitioners and Dentists Board which is regulated by the Medical Practitioners and Dentists Act (Cap. 253, Laws of Kenya). Medical officers have recently been leaving the service before the stipulated period. Most of the staff concerned have been resigning. They are able to leave public service because they give the necessary notice. Doctors who become consultants are allowed to run private clinics while still in the public service.

4. Constraints

396. There are various constraints to the provision of health services. The inadequate service deliveries to adolescents threatens their development and survival since some of them are caught up in early pregnancy, depression, drug addiction and other social ills. Other constraints include:

(a) The inadequate supply of drugs to health facilities;

(b) The deployment of the majority of staff to urban areas. More than 80 per cent of the doctors are based in urban areas, and only care for 20 per cent of the population;

(c) The mushrooming of private clinics which results in many experienced staff leaving the public sector;

(d) The public's lack of knowledge about preventive measures such as proper sanitation and hygiene;

(e) The limited service provision and access to these services;

(f) The impact of HIV/AIDS on various programmes resulting in an increase in infant and child mortality;

(g) The effect of HIV/AIDS on the most productive population bracket.

D. Article 26. Social security

397. The Constitution of Kenya does not mention the right to social security. Therefore, there is no universal social security and welfare system in the country. Nevertheless, there are some limited legislative measures and policies on social security.

398. The main legislation governing social security in Kenya is the National Social Security Fund Act (Cap. 268, Laws of Kenya). It requires contributions from persons who are formally employed. The Widows and Orphans Pensions Act (Cap. 192, Laws of Kenya) caters for the interests of widows and orphans. The Widows and Children's Pensions Act (Cap. 195, Laws of Kenya) provides that on becoming a public officer a man, married or unmarried, is eligible to contribute voluntarily to a fund for the benefit of his widow or orphans. The Pensions Act (Cap. 189, Laws of Kenya) provides for the payment of pension benefits to the dependants of a retired civil servant.

1. Context and implementation

399. Currently, public servants reaching retirement age (55 years) receive a pension. The pension benefits are, however, inadequate, and in most cases insufficient to maintain the children of the retired worker. There are practically no social security benefit schemes for the aged, disabled, single mothers and child-headed families, or for those who have not contributed to the National Social Security Fund. Health insurance benefits are available for in-patients who have contributed to the National Health Insurance Fund. This is extended to benefit the children of these families. The informal sector participates in this fund on a voluntary basis.

400. However, Kenya practises a unique informal social initiative known as a Harambee. In this system, individuals are responsible for one another, and for those who are less fortunate. Harambees focus mainly on health and education. Many communities raise funds to pay school fees for children, or build extra school buildings. With regard to health, communities collect funds to help people who have incurred major medical expenses. The public response is very positive. There are also instances where the medical bills incurred during hospitalization are paid by the community through Harambees. The Harambee philosophy cuts across tribal barriers, social status and other boundaries. Health facilities are also built through similar efforts.

401. Deliberate efforts are now being made to mobilize parents into forming groups. A few are involved in the advocacy of the rights of children and adults with disabilities. They have been mobilized as partners and allies in the movement for the disabled.

402. There are provisions for occupational therapy, physiotherapy and orthopaedic services for adults and children with disabilities. These involve exercises and the repair of gadgets. These services are decentralized. A partner NGO, Jaypur Footwear, donates free limbs to children and people with disabilities.

403. There are many social workers in Kenya attached to various ministries. The Ministry of Home Affairs, National Heritage Culture and Social Services employs social workers who offer social services throughout the republic. The social workers are given in-service courses in areas that are not covered in their basic training. These include rehabilitation of people with disabilities. The presence of social workers who work closely with the communities enhances the welfare of children. Where there are no social workers, extension workers perform their duties. Social workers are also deployed by the Ministry of Health and by NGOs such as FPAK.

404. The Ministry of Home Affairs, National Heritage Culture and Social Services has established a crisis desk that receives reports on the insecurity of children. This desk helps to promote the social security of children. In addition, there are NGOs which play an important role in the social security and welfare of children. These include the Kenya Red Cross which feeds children in times of crisis, for example during ethnic clashes. The Jamaa Home takes care of pregnant teenagers who are in distress. There are also NGOs which have established child welfare homes. The Government has established approved schools, remand homes and borstal institutions which accommodate delinquent children.

2. Constraints

405. The main constraints are inadequate resources for catering for the needs of children, adults with disabilities and HIV/AIDS orphans. This is made worse by the fact that, recently, there has been an increase in the numbers of disabled owing to disasters such as ethnic clashes, the bomb blast and road accidents.

406. The health services provided to people with disabilities are not adequate or easily accessible. Personnel to handle the cases are also inadequate.

407. The number of children's homes is also inadequate compared to the demand for services. The approved schools, especially for girls, need to be increased to ensure that young girls do not end up in women's prisons.

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES: ARTICLES 28, 29, 31

408. The right to education for every child in Kenya is provided for but not guaranteed in various policy and statutory documents. The most important is the Education Act (Cap. 211, Laws of Kenya) which is under review. This Act entrusts the Minister for Education with the administration and management of formal and non-formal education, including technical and vocational training institutes.

409. The following are some of the existing key legal and policy frameworks:

(a) The Kenya National Examinations Council Act (Cap. 225, Laws of Kenya) establishes a national body to administer examinations;

(b) Sessional Paper No. 5 of 1968 on special education for children with disabilities;

(c) Report of the Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond (1988), which recommended the implementation of the 8-4-4 system of education to replace the old system of education inherited at independence;

(d) The Copyright Act (Cap. 130, Laws of Kenya) which deals with intellectual property rights;

(e) Legal Notice No. 50/1970 which entrust the local authorities (municipalities) with the responsibility of managing schools in their areas of jurisdiction;

(f) Master Plan on Education and Training, 1998-2003.

410. The Government has stated the aims of education to be:

(a) To impart social skills and attitudes such as philosophy of life, self-confidence, ambition, interpersonal relationships in the family and society, and the exercise of civic duties and rights;

(b) To impart cognitive skills like reasoning, problem-solving, precision, initiative and creativity. This enables the child to operate intelligently and fairly in society;

(c) To enable an appreciation of economic production factors, including the interrelationships between them and social dimensions (such as governance, demographic factors, health and nutrition, shelter, the natural environment and entrepreneurial skills);

(d) To give education an increasing impact in institutionalizing scientific agriculture to maximize yields from available land;

(e) To make education a key tool in introducing a larger number of the population to other approaches of earning a living beyond agriculture;

(f) To use education as a means of providing technical expertise.

A. Article 28. Right to education, including vocational training and guidance

411. The Ministry of Education manages education under several levels.

412. Pre-primary level. There is no legislation governing the conduct of pre-primary education. Early childhood education in Kenya begins in early childhood development centres (ECDCs). The main objective of pre-primary education is to ensure that all aspect of a child's total development are catered for. This involves basic issues such as health, nutritional care, and the initial education of children of 0-5 years. The gross enrolment rate (GER) helps to assess whether the child's right to education in these centres is facilitated. To date, over 1,064,125 children are enrolled in these centre. The GER is 35 per cent while the pupil/teacher ratio is above 50 per cent. The Government's contribution in this area in terms of finances is only 0.1 per cent. There are over 2,300 ECDCs throughout the country.

413. Early childhood education programmes at the national and district levels involve integrating services with others like health workers, local authorities, social workers and nutritionists. Teachers at this level undergo in-service courses. However, only 41 per cent of the total teaching force has been trained.

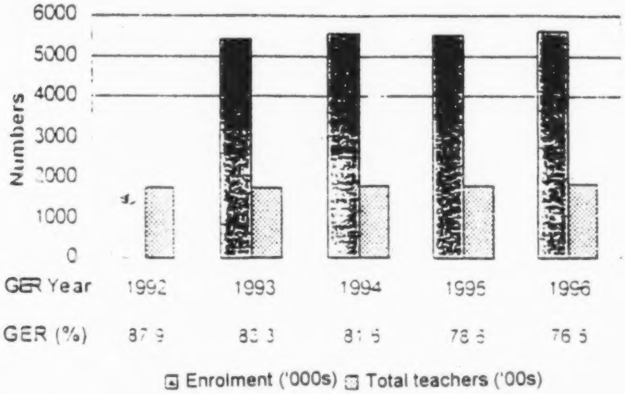
414. Areas covered in the in-service courses include child development, planning, organization and class management, physical and outdoor activities, environmental awareness, health and nutrition.

415. Curriculum materials are developed at the National Centre for Early Childhood Education located at the Kenya Institute of Education. This Centre coordinates the production of cultural-based materials like stories, riddles and games in various ethnic languages, and in Kiswahili, the national language. It also coordinates research on early childhood education.

416. ECDCs are established and managed by various sponsors such as parents associations, local authorities, religious and welfare organizations and private individuals. UNICEF, the Bernard Van Leer Foundation and the Aga Khan Foundation have assisted in this programme. The Government is currently implementing a programme on early childhood development with funding from, among others, the Department for International Development of the United Kingdom and the World Bank.

417. Primary level. Primary education targets children 6-14 years. The provision of schools, whose numbers have grown from 6,058 in 1963 to over 16,000 in 1997, encourages the child's right to education in primary school. As figure 7 shows, the GER at this level has declined from 87 per cent in 1992 to 76 per cent in 1996. Enrolment is further encouraged through school feeding programmes, particularly in ASALs, the abolition of tuition fees, and the provision of subsidized boarding facilities in ASAL regions.

Figure 7. Gross enrolment rate (GER) in primary schools



Source: Ministry of Education.

418. The main objective of primary education is to enable the child to acquire literacy, numeracy and manipulative skills. It also aims to develop self-expression, self-discipline, self reliance and utilization of mental faculties to develop desirable social values and attitudes. It also creates an understanding of the immediate environment and the wider world, and encourages children to appreciate their own and other peoples' cultural heritage.

419. The primary education curriculum offers a diversified range of subjects including the mother tongue, practical subjects such as arts and crafts, home science and agriculture, in addition to geography, history and civics, English, Kiswahili and mathematics. Teachers for this level undergo a two-year pre-service course. By 1997, 91 per cent of primary schoolteachers had been trained.

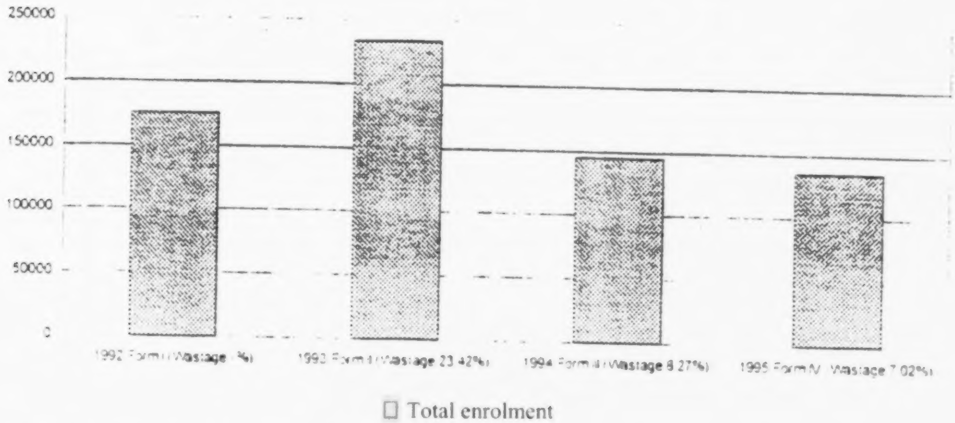
420. Secondary level. The secondary level targets children from age 14. The GER in secondary school declined from 30.7 per cent in 1989 to 26.3 per cent in 1996, a decrease of 4.4 per cent within six years. Enrolment has not kept pace with the growth in the population of the eligible age (see table 9). There has therefore been a rising number of adolescents who miss out on secondary education. There still exist gender and regional disparities in enrolment. By 1996, female children constituted 46 per cent of the total enrolment. This was lower than the near parity proportion of 49.5 per cent achieved at the primary level. In terms of regional disparities, the 1993 GERs in rural districts ranged from 34.2 per cent in Nyeri-Central Province, to as low as 6.8 per cent in Wajir and 5.9 per cent in Mandera. Female GERs in North Eastern Province were as low as 2.1 per cent in Mandera and 2.2 per cent in Wajir as compared to 18.4 per cent in Nairobi. The pupil-teacher ratio in secondary school was 95.15 by 1997. This is reasonable in terms of offering quality education. Evaluating the wastage at secondary school level can assess the child's right to secondary education as seen in figure 8.

Table 9. Transition between primary and secondary enrolment

Years	Primary Standard 8			Secondary Form 1			Rates (%)		
	Boys	Girls	Total	Male	Female	Total	Boys	Girls	Total
1991	207 300	173 700	381 000	93 727	65 069	158 796	45.21	37.46	41.67
1992	195 000	198 800	393 800	81 543	69 560	151 103	45.81	34.98	38.37
1993	210 400	185 300	395 700	90 777	78 140	168 914	43.14	42.16	42.68
1994	212 500	190 300	402 800	96 360	83 650	180 010	43.34	43.95	44.68
1995	211 600	194 000	405 600	97 394	85 917	183 311	46.02	44.28	45.19
1996	217 300	199 000	416 300	-	-	-	-	-	-

Source: Adapted from various Economic Surveys.

Figure 8. Enrolment at secondary school level



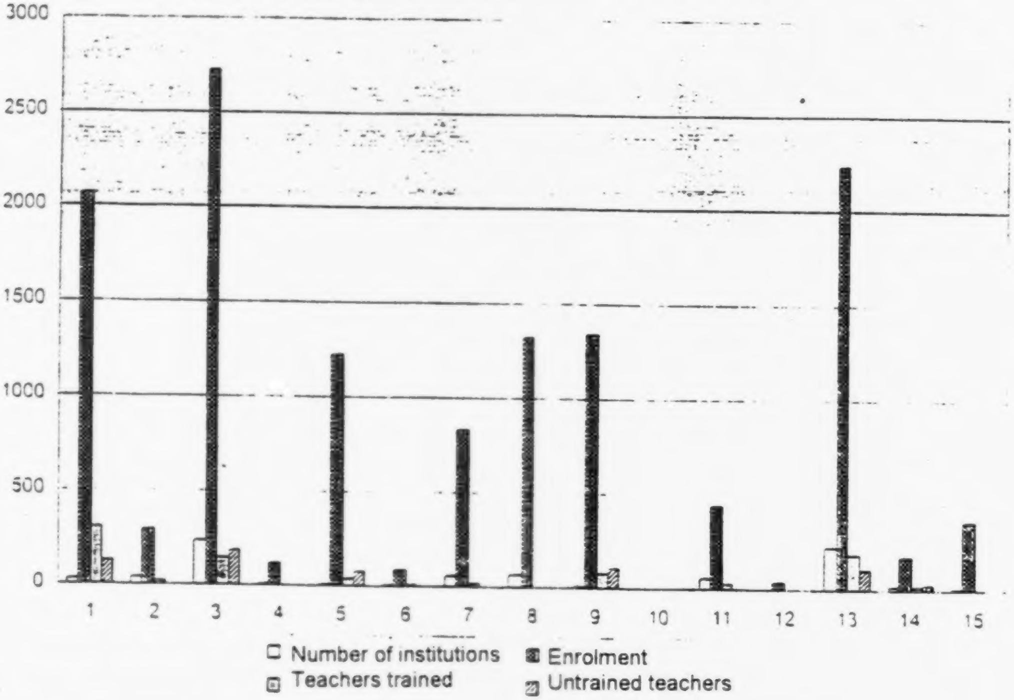
Source: Situation Analysis 1998

421. University level. There are five public universities in Kenya with an enrolment of 43,591 students in the 1997/98 academic year. This represents a remarkable 14.8 per cent increase from the previous academic year. There were 13 registered private universities in 1998. Four private universities are accredited by the Government. The enrolment in the private universities shows gender parity with female students constituting 50.3 per cent.

422. Children with disabilities. Children with disabilities are grossly under-enrolled in Kenyan schools. The Comprehensive Education Sector Analysis (CESA) (Republic of Kenya and UNICEF, 1994) estimated that Kenya had about 750,000 children with disabilities in the age group 0-16 years. A recent study estimated that the rate of enrolment in special schools programmes is only 6 per cent of the eligible school-going population.

423. Data on children with disabilities are rare even within established reports like the National Development Plan, Economic Surveys and the Population Census. The Government funds special education in partnership with donors, well-wishers, religious organizations and NGOs which have set up programmes and schools which cater for children with disabilities (see figure 9). There are currently 105 special primary boarding schools with an enrolment of just over 10,370 children. Another 22,000 children, with disabilities are integrated in regular schools. There are 52 Educational Assessment and Resources Services (EARS) centres in 52 districts complemented by 345 subcentres. The Government provides personnel for the EARS programme, while the Danish development assistance (DANIDA) provides funds for both development and recurrent expenditure. However, DANIDA has transferred the project to the Ministry of Education. The Ministry spends 0.3 per cent of its total budget on this subsector. This is inadequate to sustain the 34 special schools which receive government grants.

Figure 9. Special education programmes in Kenya, 1997

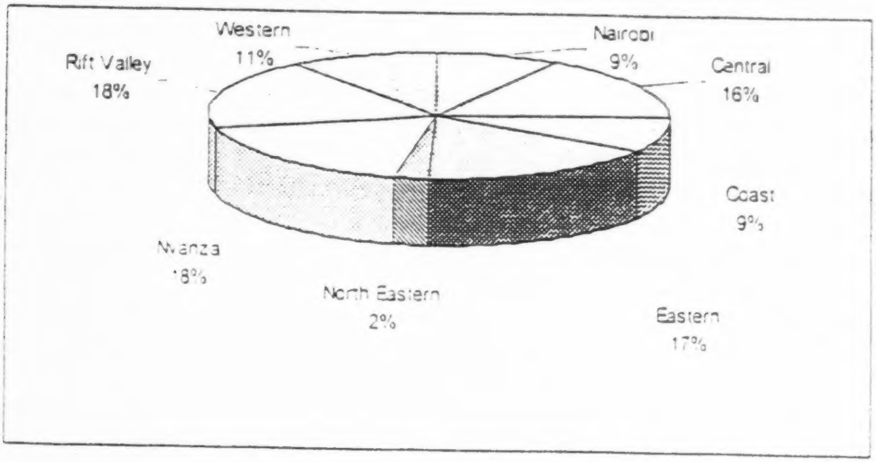


Source: MOE, 1997.

424. Figure 10 shows the number of children assessed by EARS by 1997. A comparison of the number of children assessed and the available institutions shows that a majority of the children with disabilities are outside education and training institutions. A reasonable number of the children assessed under EARS programme fit in special schools. However, a larger number can fit into integrated schools with some special care. Statistics show that the Government can integrate children with disabilities within normal schools because it is already stretched in its education and training budget. If well utilized, this option can be used to provide education to children with disabilities so as to enable their full participation in society. This measure will also

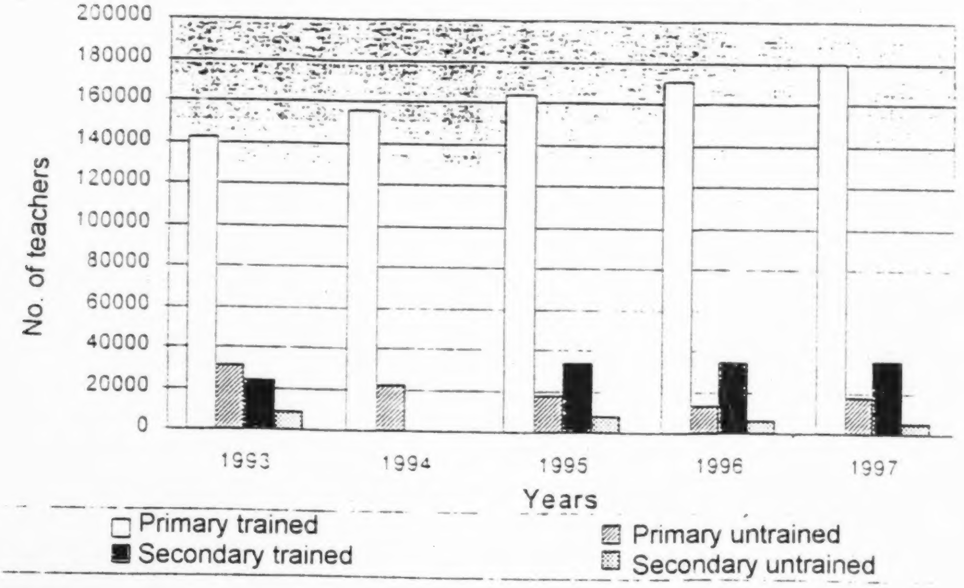
encourage the acceptance of such children by people with varying cultural and religious backgrounds. This will ensure that their right to education and special care is observed in accordance with article 23 of the Convention on the Rights of the Child. As figure 11 shows, there are more trained teachers than untrained ones. From time to time, in-service training is conducted. This enables the teachers to respect and handle children properly.

Figure 10. No. of children assessed by Education Assessment and Resources Services (EARS), by Province, 1997



Source: MOE, 1997.

Figure 11. Primary and secondary schoolteachers



Source: Economic Surveys (1993-1997).

425. In general, education is provided by private and public institutions. In both cases it is expected that children will be allowed to participate in administration through the prefect system. However, school administration is carried out largely by adults through the parents and teachers associations (PTAs), boards of governors and the school administration.

426. Kenyan children, especially those in boarding schools, spend three quarters of the year away from their parents. The influence of teachers on their ethical and moral development is therefore substantial. The teacher is a role model for the child. In order to safeguard the welfare of the child against abuse by teachers who are the principal care givers, the Government has enacted regulations to guide their conduct.

427. The Teachers Service Code of Regulations (Revised) spells out disciplinary procedures to be followed especially in the interdiction of teachers. Disciplinary action against teachers starts with interdiction, suspension, and eventually removal from the register of teachers. Acts of misconduct include assault against the child, carnal knowledge of the child, making sexual advances, absenteeism and drunkenness. Teachers can make their representations to the Teachers Service Disciplinary Committee, or later in a Teachers Service Tribunal which affirms or overrules the decisions of the Disciplinary Committee. Besides interdiction or removal from their teacher's register, teachers may also be charged in court for any criminal offences against the child.

428. Non-formal education. This includes any organized systematic learning activity outside the formal school system. It provides selected types of learning to particular subgroups in the population. These include children, particularly in areas of agriculture, family planning and occupational skills. This is an alternative method to reach those who are excluded from formal education, particularly children out of school. A CEDC survey done by GOK/UNICEF revealed that out of a sample of 1,319 CEDC, 75 per cent had attended school at one time or another, while only 28 per cent were still in school at the time of the survey.

429. The concept of non-formal education for out-of-school children and adults is not new in Kenya. In 1996, the National Conference on Education, Employment and Rural Development emphasized the need for the full mobilization of Kenya's human resources through a coordinated programme for youth and adults. The Conference also emphasized that people have to be mobilized outside the school system, as schools constitute only one method of producing a sufficient volume of educated persons for development. This inspired the creation of village polytechnics to provide training opportunities for primary-school leavers and drop-outs.

430. There are two main categories of non-formal education programmes: those which lead to credits and certificates, and those which do not, but provide functional knowledge and skills for productive work such as Juan Kali (small-scale informal enterprises) training programmes through apprenticeships. In Kenya this latter category refers to technical and vocational education offered in tertiary or post-school training institutions.

431. There are currently 675 youth polytechnics and youth centres. These provide technical and vocational education and training programmes for primary-school leavers. Students can join youth polytechnics for short courses even if they have not completed their primary education. Youth polytechnics are community based, with some funding from the Government and donors.

432. Non-formal education includes highly organized types of skills development centres such as the Undugu Society of Kenya. There are also literacy centres which are less organized and offer basic training. These are located in the city slums and remote rural areas. Enrolment in the non-formal education sector is likely to witness an increase because of increasing numbers of children outside formal education. They have emerged in the poor residential areas of the cities and towns. Private individuals or communities establish them in response to a felt need for the provisions of education to all children. Children enrolling are mainly children in need of special protection who have either never enrolled in schools or have dropped out because of poverty. Informal schools are flexible. They do not require school uniforms, age limitations are not very rigid, and there is less stiff punishment for absenteeism. Most informal schools, however, lack basic facilities, are overcrowded, lack qualified teachers, and are excluded from services and opportunities available to children in formal schools.

433. Adult education. The provision of adult education also enhances efforts towards the provision of quality education for Kenyan children. Adult education includes programmes of adult literacy, occupational (vocational skills training) and community programmes. These enhance the appreciation in adult learners of the impact of education on their children. Therefore, they are a way of creating awareness of children's right to education. A parent who is literate increases productivity, and this output is ploughed back for the children's benefit. Literate parents also understand the nutrition requirements of their children, which leads to better health. Literate parents are more likely to seek special attention for their children with disabilities.

Table 10. Recurrent budgetary allocation to basic levels of education

Level	1991/92	1992/93	1993/94	1994/95	1996/97	1997/98
Primary education	309 521 633	384 565 176	592 254 763	18 438 925	26 346 917	35 044 739
School for the handicapped	4 186 645	4 843 616	7 716 817	1 529 127	2 727 274	3 052 189
Pre-primary	637 155	645 138	759 857	180 456	376 642	512 359
Secondary	84 563 735	97 240 916	168 047 335	16 176 868	27 117 305	32 438 708
Overall budget	560 999 160	628 214 850	961 847 540	1 039 675 095	1 521 245 672	1 629 893 500

Source: Budget estimates, GOK.

434. Good health and adequate nutrition are necessary for pupils' success in learning. A well-nourished and healthy child has a higher learning capacity than one who is malnourished or unhealthy. To enhance the nutrition and health of children in the school system, there has been integration of nutrition and health into the curriculum, the use of schools as centres for community health, and school feeding and school milk programmes.

B. Article 31. Leisure, recreation and cultural activities

435. Rest is very important for a child's development. Before the pre-primary level, the family, especially the mother, is responsible for ensuring rest and leisure time for children. In Kenya, as in other African countries, the child's welfare is central. In the Kenyan education system, school terms are divided by holidays in April, August, and a long holiday that lasts from about mid-November to early January. These ensure approximately four months of rest, particularly for the pre-primary and lower primary levels. There are five formal school days a week. The school curriculum facilitates sporting and recreation by providing for co-curricular activities and physical education lessons within the school timetable. Two out of eight lessons a week are set aside for physical education in lower secondary school, and one for upper secondary. However, because of the overcrowded 8-4-4 system of education, a substantial portion of leisure time is utilized in homework, particularly for children in upper primary classes and in secondary schools.

436. Some aspects of traditional education are still in place. This embodies traditional recreation activities appropriate for children of different ages. This is particularly the case with most rural children. Traditional games and sports are played alongside modern recreational activities. These include swinging of loop (rings around the waist) for girls, wrestling for boys, hide and seek for both sexes, and bean bag games. Today, there is a whole range of modern facilities enabling children to play games like football, netball, basketball and to swim. There are regional differences in the facilities available in urban and rural areas.

437. The Ministry of Home Affairs, National Heritage, Culture and Social Services coordinates the various cultural development programmes in the country. This ensures promotion of the performing arts, including drama, music, dance, acrobatics, poetry, sports, arts, and the development of a wide range of cultural activities. These cultural activities are available for those in and out of school. NGOs and the private sector agencies also sponsor children's arts exhibitions and theatre for recreation and communicating development messages.

438. Among the topical themes explored within the Kenya Music and Cultural Festival are the "rights of the child" and "disability is not inability". The Ministry of Education, through its Performing Arts Section, coordinates schools' and colleges' music and dance festivals from the zonal to the national level. These festivals portray Kenya's cultural diversity and its appreciation, especially within the school environment.

1. Budget status of children's education

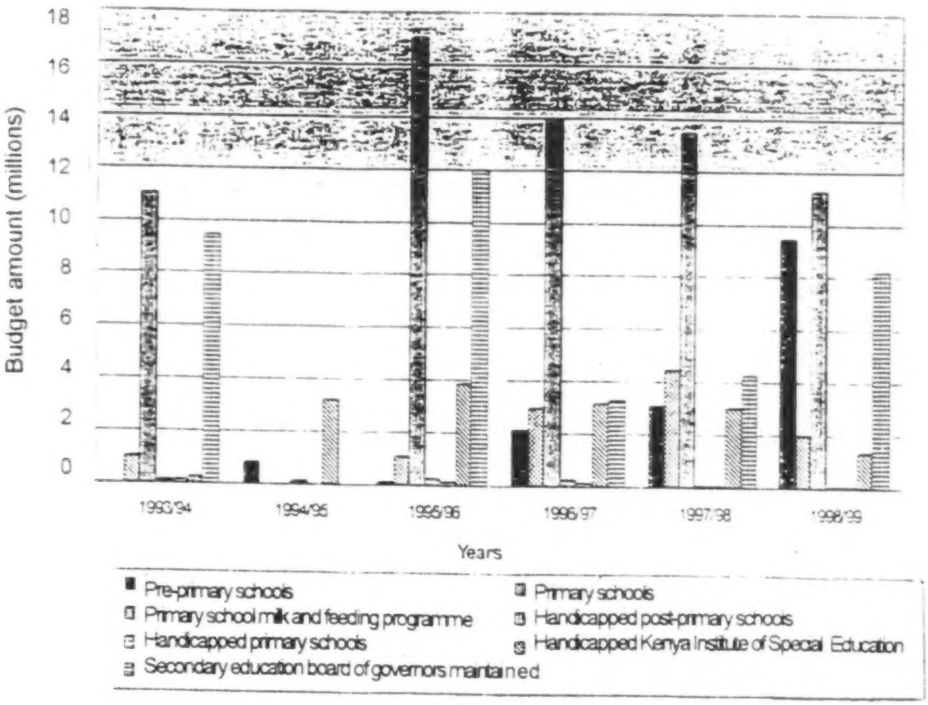
439. The right to education is severely affected by the Government's budgetary allocations to the sector. While the sector gets about 80 per cent of the Government's recurrent expenditure, it is faced by severe problems because of poor targeting and distribution.

440. Even the past distribution of financing has not been proportionate with enrolment levels. While primary schools have much higher enrolment rates than secondary schools, they get proportionately lower allocations. Currently, 57 per cent of public funds go to primary education, 16.2 per cent to secondary and 20 per cent to post-secondary education. This

distribution is not proportionate to overall enrolment considering that 89 per cent of children are enrolled at the primary level, 29 per cent at secondary level, and less than 2 per cent at the post-secondary level.

441. The problem is compounded by the fact that about 85 per cent of recurrent expenditures goes to general administration and planning, including teachers' salaries. Further, overall recurrent expenditure estimates account for about 95 per cent of the total budget of the Ministry of Education, leaving a mere 5 per cent of allocations for development activities (see Figure 12). This has severely constrained the ability to equip schools even with the most basic requirements.

Figure 12. Development budget for basic education services for children, 1993-1998



Source: Budget estimates, GOK.

2. Measures to ensure quality education

442. Various measures have been put in place to ensure the child's right to quality education. These include the following.

443. High enrolments at the early childhood care and development centres are encouraged so as to develop the full potential and talent of the child. The school milk and school feeding programmes, especially in ASALs, are expected to raise enrolment rates and increase retention and completion rates.

444. The Government has defined its aims of education to conform with these minimum standards. The Ministry of Education, through its inspectorate section, ensures full compliance with curriculum implementation in all institutions registered by the Ministry, whether private or public. This ensures that no institution or body interferes with the liberty of children in the classroom and in co-curricular activities. The curriculum is continuously reviewed to ensure that children are not forced out of school due to stress.

445. The Government aims at providing quality trained teachers at all levels of education. This ensures that they can handle children without violating their rights. To ensure that schools conform to the standards set for teaching, safety and health measures, and the number and suitability of staff, school inspectors are deployed at the zonal level, including the district and provincial levels.

446. The Kenya education system is mainly child centred. It identifies and specifies what the learner will be able to accomplish at the end of a given programme. It is therefore more concerned with learner outcome, rather than with the learning process. The role of a teacher is no longer that of an information giver, but of a facilitator and supervisor of the learning process. The teacher's main responsibility is to plan, organize, direct, coordinate, and control experiences of the learners engaged in various learning activities. The 8-4-4 system emphasizes a practical approach to delivery of the curriculum.

447. The Government's policy is to shift resources from tertiary to basic education. This is reflected in the current trend where the majority of donor programmes are in primary and secondary school. These measures include Strengthening of Primary Education (SPRED) and Primary Schools Management (PRISM) programmes.

448. The development of respect for the child's parents, their cultural identity, language and national values has been implemented to reasonable levels. In the early stages of education in the rural schools, children are allowed to learn in their mother tongues. This is the case especially in the pre-primary and in the lower stages of the primary school level. This enhances the children's cultural identity and understanding of their language.

449. The system of education in Kenya prepares the child for a responsible life in a free society. It ensures that children learn various subjects as they progress through different levels of education. This is enhanced further by the learning of practical subjects like home science, agriculture, arts and crafts.

450. In Kenya, the free exchange of cultural values is encouraged through the establishment of national schools. In these schools, children from all Kenyan communities learn together. This enhances cultural integration. National music festivals and drama competitions at various levels of education further enhance integration.

451. The impact of education on children is also enhanced during various National Scientific Congress competitions.

452. The high cost of textbooks and the demand for multiple-course books are major factors impeding access to primary education by children from poor households. In order to reduce the cost of textbooks for the primary school sector, the Government launched the National Policy on Textbook Production, Procurement and Supply for Primary Schools and the Approved List of Primary School Textbooks. These policies provide guidelines for the production of high-quality textbooks as a basis for improved learning. They allow the participation of private publishers and set guidelines and criteria for selecting textbooks for the primary level. Students are now required to buy only one textbook per subject per class.

453. Currently, many schools and colleges have guidance and counselling programmes. At the secondary level, the Teachers Service Commission has appointed teacher to head guidance and counselling departments. Effective guidance and counselling services minimize various forms of indiscipline.

454. Private educational institutions play an important role in the provision of education and training. However, some private schools are poorly managed, and this affects negatively the quality and relevance of education and training. Private educational institutions are required to comply with the regulations on the establishment and management of educational institutions. They are also encouraged to involve parents by forming Parents Associations to assist in the maintenance of high standards of education.

455. Heads of schools are encouraged to maintain open channels of communication so students can participate in the management and administration of their institutions. Dialogue is encouraged, and a prefect/class monitor system is set up involving children in some decision-making. A number of special education institutions for all categories of children with disabilities have been established. These range from primary to post-school vocational training centres. The integration of children with disabilities within regular schools has increased their educational opportunities and alleviated the threat of isolation. This has created a sense of dignity and promoted self-reliance. The Government's policy on the education of children with disabilities is clearly spelt out in the Master Plan on Education and Training for the Years 1997-2010. This plan specifically notes that government policy will be to encourage the integration of disabled children in normal schools as much as possible in order to ensure their full participation in the learning process.

456. District education and training boards will be encouraged to establish special schools for children with severe disabilities. They must take into account the special needs of these children when putting up physical facilities. The Government has a process of identifying children with disabilities and encouraging families to enrol them in school. It is also addressing the curriculum needs for children with disabilities (e.g. the blind), who cannot fully fit in the existing 8-4-4 curriculum which emphasizes practical subjects.

457. Various vocational rehabilitation training centres under the Ministry have been established. The structural adjustment programmes currently weaken these.

458. There have been community efforts to establish a fund for children with disabilities. A Special Education Unit within the School Inspectorate of the Ministry of Education was created in 1997. An Education Assessment Resource Centre in the Ministry of Education was

also established with the help of DANIDA. The Kenya Institute of Special Education has also been set up to train teachers in special education institutions. The Kenya Integrated Programme with assistance from the European Union and Sight Savers International has also been established.

459. Religious beliefs of the child are respected within the schools system. Religious teaching is also incorporated within the school curriculum. Various Church organizations continue to sponsor the establishment of schools and other institutions of learning. In Church-sponsored schools, students from different religious backgrounds are allowed to enrol without any interference with their faith.

3. Constraints

460. A number of constraints affect the provision of quality education. These are described below.

461. Budget allocations to the education sector constitute 33 per cent of the overall budget. Budgetary constraints and the introduction of structural adjustment programmes by the Government affect the implementation of educational programmes. They also impact on the increased participation, retention and completion by the child of the various levels of education. The provision of adequate education facilities like classroom blocks and dormitories, and safety, health and other regulations are sometimes compromised. With the implementation of structural adjustment programmes, special education receives a funding of only 0.3 per cent of the Ministry of Education's budgetary allocations which is inadequate.

462. Disparities along gender and regional lines create categories of children whose access to education is limited. There are gender disparities in favour of boys in the provision of education, recreational facilities and leisure activities. There are also differences between rural and urban areas in terms of leisure and recreation. However, in terms of playgrounds, urban children are disadvantaged.

463. Socio-cultural factors limit the success of any policy aimed at ensuring that the child is enrolled in school. For example, rites of passage and early marriages inhibit the child's development.

464. The policy on non-formal education is not yet operational. Although guidance and counselling services are provided, their effectiveness is hampered because teachers offering these services lack proper training.

465. The development of the physical and mental abilities of the child to the fullest potential are limited by the scarcity of recreational facilities in school and at home, especially in the urban areas. Available facilities cannot adequately cater for children with disabilities. There are very few facilities for training middle-level teachers. This impacts negatively on talented and gifted children.

466. There are little data relating to the actual number of children with disabilities.

467. The 8-4-4 system of education is crowded in terms of the subjects offered. This reduces the time for leisure activities, since the time allocated for these activities is often taken up in remedial teaching.

IX. SPECIAL PROTECTION MEASURES: ARTICLES 22, 38, 39, 40, 37 (b) - (d), 32, 33, 34, 35, 36, 30

468. In traditional Kenyan cultures the child's welfare was a central social and communal matter. Cultures have had a critical influence on the child's right to protection. But traditional cultures have slowly lost their hold. In their place, the Government has put in place social, administrative and legal measures to safeguard children against economic exploitation like child labour and other forms of abuse. Some of the statutes dealing with children make provision with regard to refugee children, children who are sexually abused, neglected and abandoned, those in internal conflicts, those using drugs and psychotropic substances, and those deprived of their liberty or in conflict with the law.

469. The Government protects child victims through administrative and rehabilitative services. NGOs, religious organizations and community-based organizations (CBOs) also assist children in physical and psychological recovery and in social reintegration.

A. Children in emergency situations

1. Article 22. Refugee children

470. Kenya is drafting refugee legislation to harmonize various administrative measures being undertaken by different agencies. Kenya is a signatory to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the Convention governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity (OAU) (1969).

471. Kenya hosts about 174,000 refugees. Of these, approximately 92,000 are children (UNHCR, 1998). These are unaccompanied minors, children of single parents and those with both parents. The Government gives refugee status to children whether or not they are accompanied. The International Committee of the Red Cross (ICRC) and the Kenya Red Cross trace separated families and reunite them.

472. In collaboration with UNHCR, Kenya has established two refugee camps: Kakuma in Turkana District in Rift Valley Province and Daadab in Garissa District of the North Eastern Province. These cater for displaced children from Somalia, the Sudan, Ethiopia, Rwanda and Burundi. The camps have adequate health facilities for immunization, prenatal care, general health care and therapeutic feeding for children under 5 years old. The registration of new births is continuous in both camps.

473. The Government facilitates the provision of formal and non-formal education for refugee children with the assistance of UNHCR, UNICEF, Radda Barnen CARE International, the Kenya Catholic Secretariat, the National Council of Churches of Kenya (NCCK), Jesuit Refugee

Services and Don Bosco. All children of school-going age attend schools, which run feeding programmes. These programmes have helped to increase attendance, enrolment and retention levels.

474. Guidance and counselling are provided for the children in these camps. This enables their physical and psychological recovery. In addition, the camps offer apprenticeship programmes in tailoring, carpentry and masonry. The trainees in these programmes are attached to construction and minor repair works in the camps, in preparation for their eventual social reintegration.

2. Articles 38 and 39. Children and armed conflict

475. Under the Geneva Conventions Act (Cap. 198, Laws of Kenya) and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention), Kenya recognizes the need to protect and safeguard the welfare of children in situations of armed conflict.

476. Since 1992, Kenya has witnessed conflicts in the Rift Valley, Western, Nyanza and Coast Provinces. As a result, children were subjected to physical and psychological trauma.

477. The Government, UNDP, religious organizations such as the Kenya Catholic Secretariat and NCCK, and NGOs contributed relief and rehabilitative services. In mid-1998, the Government set up a judicial commission to inquire into tribal clashes in Kenya since 1991. It is mandated to find out the origin, causes and action taken by police and to recommend the prosecution of persons who may have committed offences.

478. A survey by the NCCK in October/November 1993 established that a total of 38,367 families were directly affected by the clashes in Uasin Gishu, Bungoma, Mt. Elgon, Trans Nzoia, Turkana, Kisii/Nyamira and Kisumu districts. It estimated that more than 195,671 children were directly affected by the clashes. The number increased following fresh clashes in Migori, Mombasa and Nyambene in 1997.

479. Following these clashes, thousands of children were orphaned, maimed, raped or sodomized. In other cases, children abandoned or disappeared from their homes after they witnessed their parents being subjected to beastly acts. NGOs and Churches have tried to respond to the relief and resettlements needs of the displaced, but few efforts have been made to meet the needs of the children affected by the clashes.

480. In the face of these conflicts, hundreds of families still live in camps in Nakuru District. In Kiginor camp, there 458 families with more than a thousand school-going children. Some of the children, especially in the lower grades, have totally lost touch with school, and interest in continuing with learning. Similar situations exist at Kong asis and Mauche camps with 267 and 160 families, respectively. These have more than 1,500 children, most of whom are of school-going age.

481. The clashes adversely affected learning in most schools. The fighting between Pokots and Marakwets in April-May 1997 interfered with learning in more than 20 schools.

482. The clashes led to an increase in early pregnancies. Girls' school enrolment decreased, and there was a rise in early drop-out from schools between 1991 and 1994. In some cases, girls' learning opportunities were cut short when they were traded off as security for peace. Female children were subjected to mass rape at the height of the clashes. Because of the clashes, children have been forced to assume unusual roles such as caring for those disabled by the conflict, unwanted children, and those affected by AIDS.

B. Children involved with the system of administration of juvenile justice

1. Article 40. Children within the system of administration of juvenile justice

483. The Constitution and the Criminal Procedure Code (Cap. 63, Laws of Kenya) provide due process rights in respect of any individual accused of a criminal offence. These include the rights: to a fair hearing within a reasonable time by an independent and impartial court established by law; to be presumed innocent until proved guilty; to a legal representative of the accused's choice; to cross-examine the State witnesses; to have an interpreter if the accused cannot understand the language used at the trial; and to appeal against the decision of the court. In capital offences, the accused is entitled to legal representation at public expense.

484. A child is entitled to due process rights and enjoys additional safeguards provided by the Children and Young Persons Act which is the principal statute on juvenile justice in Kenya. The Act establishes a juvenile court for the purpose of hearing all charges against persons under the age of 18 years, except where such persons are charged jointly with adults. There is only one Juvenile Court in Kenya which is situated in Nairobi. In other towns adult courts are converted to juvenile courts on an ad hoc basis.

485. Capacity to commit a crime commences at the age of 8 years. Between the ages of 8 years and 12 years, a child can be held liable for an offence if it is proved that he or she was aware of the offence. Furthermore, a child below the age of 12 years is presumed to be incapable of committing a sexual offence.

486. The procedure for hearing a case involving a child is similar to that applied in other courts, both in terms of applying the law on criminal procedure and the law of evidence. The Children and Young Persons Act provides additional safeguards to a child by allowing the attendance of his or her parent or guardian if he or she can be found and resides at a reasonable distance. Furthermore, the Act protects a child's privacy firstly by restricting the categories of persons who may be allowed into a juvenile court to members and officers of the court, their advocates, witnesses and others concerned with the case; parents and guardians; and other persons specifically authorized by the court to be present. Secondly, the Act prohibits publication of the name and address of the child, the school which he or she is attending, or any other way to identify the child without authorization from the court.

487. A child is entitled to bail unless he or she is charged with murder or manslaughter, or unless it is necessary in his interest to remove him or her from association with any undesirable persons; or if his or her release is likely to defeat the ends of justice.

488. In dealing with every case of a person under 18 years, the court is required to have regard to his or her welfare and must, in a proper case, take steps to remove him or her from undesirable surroundings and to ensure that proper provision is made for his or her maintenance. Words such as "conviction" and "sentence" must not be used in respect of a child.

489. A sentence of death must not be pronounced on, or recorded against a person if at the time the offence was committed he or she was under the age of 18 years. Furthermore, a person under the age of 18 cannot be sentenced to imprisonment except where the court is of the opinion that he or she cannot be suitably dealt with in any other way permitted by the law; in such cases the court should record its opinion and the reasons for it. The imprisonment must be confirmed by the High Court, and while in prison the child must be confined separately from adult prisoners and must not be allowed to associate with them. The warrant of committal must clearly show the age of the child. Other ways of dealing with a young offender include discharge of the offender, probation, corporal punishment, payment of compensation or costs, committal to the care of a fit person or an approved voluntary institution or approved school (if the child is less that 15 years of age), and committal to a borstal institution.

Constraints

490. On of the difficulties experienced in the administration of juvenile justice is the overlap of discipline and protection cases. This weakness arises from the Children and Young Persons Act which does not provide a clear distinction between a child in need of protection and a child in need of discipline. A child in need of protection may easily be processed through the juvenile justice system as one in need of discipline.

491. The child's due process rights are compromised by inadequate legal aid services throughout the criminal justice process and other support services and structures essential for the expeditious disposal of cases. For example, the inadequacy of specialized courts to handle matters affecting children reduces the time required to focus on children's cases.

492. Overreliance on institutionalization of offenders as a corrective measure has also been identified as a major weakness of the juvenile justice system. This weakness is attributable to many factors including the inadequacy of pre-sentencing reports by social workers. Besides the high cost factor in running correctional institutions the imbalance between institutions which cater for boys and girls can only mean that girls (who have been allocated one institution nationally) suffer a greater disadvantage. The use of non-institutional community options is currently being advocated.

493. The proposed Children Act provides extensive provisions on the treatment of child offenders which include the right to legal aid at public expense where the child is unable to obtain it, and the right to expeditious disposal of a case. The proposed Act also outlaws the use of imprisonment and corporal punishment as corrective.

2. Article 37 (b) - (d). Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

494. Section 72 of the Constitution guarantees the individual's right to liberty. Children's personal liberty can be infringed only if it is for the purpose of their education and welfare.

495. Section 73 of the Constitution outlaws slavery and servitude. This is complemented by sections 264-266 of the Penal Code which make it a criminal offence to buy or dispose of slaves, to be a habitual dealer in slaves, or to subject a person to unlawful compulsory labour.

496. Under section 17 A of the Children and Young Persons Act, a court may make an order committing a child to the care of a fit person or approved society. Children affected include children in need of protection, discipline and care.

497. In Kenya, the police are responsible for criminal investigations and arrests. Prosecution is the responsibility of the Attorney-General. However, in practice, prosecutions are sometimes done through the police. The Kenya Police Act (Cap. 84, Laws of Kenya) contains general provisions on the conduct of criminal investigations. It has no special provisions on the conduct of the police in relation to children. However, the Children and Young Persons Act requires that accused persons under 18 years should be kept in remand homes and not in prison or police stations. The Children's Department usually provides advice in cases affecting children.

498. Under the Children and Young Persons Act, children may legally be deprived of their liberty where they have been in conflict with the criminal law, where they need social care, or are neglected or abused. In these instances, children may be placed in a juvenile remand home awaiting trial. The lack of facilities makes this difficult. For instance, there is only one officially designated Juvenile Court in the country. In many cases, normal courts are converted into juvenile courts. Normal courts lack the proper atmosphere for hearing cases involving children.

499. Kenya has 12 juvenile remand homes. These are inadequate to cater for the needs of all children in conflict with the law. This means that some children are held with adults in prison remand homes. This practice violates the spirit of the Convention on the Rights of the Child.

500. Kenya has tried to apply the United Nations Guidelines for the Prevention of Juvenile Delinquency and the Standard Minimum Rules for the Administration of Juvenile Justice in the administration of juvenile justice. There are rules and regulations for remand homes allowing for contact between children deprived of their liberty and their families. However, these institutions are few. This involves long distances between remand homes and the child's home. This compromises the child's rights. Attempts have been made to increase the number of juvenile remand homes and to bring juvenile justice closer to the child.

501. There is no law guaranteeing prompt legal assistance for children deprived of their liberty. However, children have the right to challenge a decision to deprive them of their liberty. NGOs such as the Federation for Women Lawyers (FIDA), Kituo Cha Sheria (Legal Advisory Centre) and the Law Society of Kenya (LSK) provide legal representation. To improve this capacity, children's officers are currently undergoing para-legal training at the Kenya School

of Law. Approximately 60 officers are trained every year. These include children's officers, police officers, protection officers and magistrates. Some of these have also been trained on juvenile justice administration, prevention of juvenile crimes and treatment of young offenders by experts from the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in Tokyo.

C. Children in situations of exploitation

1. Article 32. Child labour

502. Several statutes in Kenya recognize the right of the child to be protected from economic exploitation. There has also been increasing recognition that child labour poses serious development problems. A national policy on child labour is evolving. It is spearheaded by the Central Organization of Trade Unions (COTU) and its affiliated unions. These efforts complement the laws on child labour. The Employment Act (Cap. 226, Laws of Kenya) recognizes that working children need to be protected and that children should not be employed in industrial concerns. It also regulates and controls the employment of children, their remuneration, hours of work, rest and leisure, medical care, and health and safety standards. The Regulation of Wages and Conditions of Employment Act (Cap. 229, Laws of Kenya) provides for the establishment of wages advisory boards and wages councils. These regulate wages and conditions of public employment. They also specify the wages payable to adults and children in all types of employment.

503. The Industrial Training Act (Cap. 237, Laws of Kenya) regulates the training of personnel in industry, and has provisions touching on children. It provides, for example, that a person may offer him/herself as an apprentice or an indentured learner upon attainment of 15 years. Minors can only do so with the consent of their parents or guardians. Further, all persons entering into such a contract should get a medical examination at the expense of the employer.

504. The Employment of Women, Young Persons and Children's Act (Cap. 227, Laws of Kenya) restricts the employment of children in certain industrial settings. It empowers the President to prohibit the employment of children in certain economic sectors. It provides penalties for non-compliance. Other laws touching on child labour are the Trade Unions Act (Cap. 233, Laws of Kenya), the Trade Disputes Act (Cap. 234, Laws of Kenya), the Workmen's Compensation Act (Cap. 236, Laws of Kenya) the Education Act (Cap. 211, Laws of Kenya) and the Children and Young Persons Act (Cap. 141, Laws of Kenya).

505. Despite these laws, child labour is still prevalent in Kenya. Children work in plantations, mines and quarries, hawking, and in households as domestic help. In 1996, Kenya was reported to be among the top 10 African countries in the use of child labour. It was sixth in terms of child labour for children aged 10-14 years.

506. Child labour has its roots in the attitudes of pre-colonial societies. These regarded children as members of the economic production unit of the family, as a source of economic security for the aged, and a welcome help in day-to-day family chores. The work performed was regarded as critical to their training, education and socialization. It also prepared them for adult

life in their communities. However, a new social order and economic policies have pushed men out of their rural homes. This has resulted in women's and children's participation in economic labour. This has become entrenched.

507. Kenya ratified ILO Convention No. 138 on Minimum Age for Admission to Employment in 1979. The draft Children Bill (1998) tries further to restrict the employment of children. Child labour is not "light work" which is part of the socialization process of young people. It is work that prevents children from attending school. It is often performed under conditions that are hazardous and which hamper the physical, mental, spiritual, moral and social development of the child.

508. The Government of Kenya signed a memorandum of understanding with ILO in 1992 at the start of the ILO/IPEC programmes. In the programme year 1992/93, IPEC focused on raising awareness about child labour in Kenya. This attracted many partners such as the Ministry of labour and Manpower Development, the Federation of Kenyan Employers (FKE), the Central Organization of Trade Unions (COTU), NGOs, local communities and the media. These partners have initiated action against child labour. There are 22 ILO/IPEC programmes in Kenya. The Children's Department has compiled a Directory of NGOs Combating Child Labour. Kenya participated in the Global March against Child Labour. Awareness materials including calendars and posters have been produced both in English and Kiswahili.

509. There are intensified campaigns against the exploitation of the girl child in all spheres including child labour. The Girl Child Network is one of the lobby groups spearheading this campaign. The Ministry of Labour has a Child Labour Unit that carries out inspections on child labour. However, this unit is short of trained personnel and other logistical support. There are no cases of children reporting incidents of economic exploitation. Both parents and the children themselves often condone the practice. In other instances, children and interested parties may not be aware of where to report such cases.

510. There is a gazetted National Steering Committee on Child labour. It is composed of relevant government ministries, NGOs, trade unions and the Federation of Kenyan Employers. The National Steering Committee has requested funding from ILO/IPEC to enable the Central Bureau of Statistics to carry out a survey on child labour. Cases of child labour have been increasing because of the rising levels of poverty in the country. The introduction of cost-sharing and other user charges in schools has further increased this practice.

2. Article 33. Drug abuse

511. Kenya is a signatory to the Single Convention on Narcotic Drugs (1961, amended in 1978), and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

512. The Children and Young Persons Act (Cap. 141, Laws of Kenya) states that children found buying, receiving, or in possession of any drug which is dangerous or habit-forming are in need of protection. Such children may be taken to a place of safety, or to court, where they are committed to an approved school, an approved society or to the care of a fit person. The Dangerous Drugs Act (Cap. 245, Laws of Kenya) prohibits the sale and use of narcotics and

other dangerous drugs, but it does not contain specific provisions for protection from alcohol abuse as this is provided in the Liquor Licensing Act (Cap. 121, Laws of Kenya) and the Traditional Liquor Act (Cap. 122, Laws of Kenya).

513. Since the early 1970s there has been a considerable increase in the use and abuse of various drugs in the country. Drug abuse is reported regularly in the papers. Court cases related to drug use are also common. Drug abuse occurs both in and outside schools. The major drugs abused in Kenya are alcohol, tobacco, cannabis, khat and, to a lesser extent, tranquilizers and volatile solvents (petrol, glue, and plastics). Glue sniffing is rampant amongst street children. A chemical analysis by the Government Chemist Department in 1992/93 showed that glue is very toxic and contains substantial quantities of benzene.

514. Although no study has been undertaken, there is evidence of considerable smoking among children in urban areas. The Government is concerned about this habit.

515. The Government commissioned a survey in 13 districts in Kenya in 1997. This indicated that only 1 per cent of the total sample of CNSP were using drugs. This was considered to be a gross underestimate. Qualitative information indicated that a substantial number of street children take drugs, particularly petrol and glue. Child prostitutes also take drugs. Many of the children also peddled drugs along with other items. Children in eastern Kenya are used in the harvesting of khat.

516. Drug abuse is increasing rapidly, especially among street and school-going children. The effect of drugs on users is similar to narcotics. Drug abusers include caretakers drugging children with sedatives intended for use by adults, or sharing narcotics and alcoholic drinks with them.

517. The law addressing drug abuse and trafficking, especially as it relates to children, is inadequate, particularly with regard to the handling of drug traffickers and the treatment of the children involved.

518. There are no provisions dealing with the exploitation of children in the production, sale and use of narcotics and other dangerous substances. This allows children to be used with impunity in the production khat in Kenya. However, most measures are not rehabilitative since they deal with children caught buying, receiving, selling or in possession of any drug considered dangerous or habit forming.

3. Article 34. Sexual exploitation and sexual abuse of children

519. The Penal Code (Cap. 63, Laws of Kenya) defines rape in section 139 an unlawful carnal knowledge of a woman or a girl without her consent, or if such consent is forcibly obtained.

520. The key statutes which deal with this aspect of exploitation are the Penal Code and the Children and Young Persons Act. The Penal Code makes it an offence to rape or defile girls under 13 years and boys under 16 years, and to detain boys under 14 years of age. Homosexuality, incest and living off the earnings of prostitution are also offences. The Children and Young Persons Act provides for intervention where a child has been sexually

assaulted. It also provides for intervention where the child belongs to the same household as another against whom any offence has been committed. It also provides for cases where a child belongs to the same household as a person who has been convicted of an offence against a child. Such a child is considered to be in need of protection and can be taken to a place of safety by an authorized officer. The Act does not provide for direct action by members of the community who can only report to authorized person.

521. There are several indicators of sexual abuse and exploitation of children in Kenya. These include newspaper reports of cases appearing before various courts and those reported to local NGOs like the African Network for the Prevention of and Protection against Child Abuse and Neglect (ANPPCAN). However, this is merely the tip of the iceberg. Both male and female children are sexually abused. Boys are victims of homosexual relationships. The majority of the sexual abuses are of female victims usually less than 10 years old. In a big proportion of the cases, sexual abuse occurs several times before being discovered or reported. Sexual abuse in itself is detrimental. This is worsened by repeated questioning and court appearances.

522. Vulnerable children include those in homes, those engaged in child labour, particularly street boys and girls, children in domestic labour and children in institutions. Sexual abuse and exploitation of children in the homes occurs in the form of molestation, defilement and rape by people responsible for protecting them. These include parents, relatives, maids and houseboys. Such cases particularly those involving incest, are rarely reported.

523. Male members of households have subjected girl children in domestic labour to sexual exploitation. The number of cases increases as more girls enter this sector. Children in institutions may be subjected to molestation, defilement and rape. Street children, especially girls, are exploited, defiled and raped by adults. In many cases, sexual abuse leads to HIV/AIDS.

524. The causes of sexual abuse among children include vulnerability in families, lack of proper childcare and poverty. These push children to child labour and cause AIDS which leaves children without the protection of their parents. Urbanization, overcrowding and unemployment are further causes of sexual abuse. Girls are particularly vulnerable.

525. The Children Bill provides for the protection of a child from sexual exploitation and abuse. This includes protection from exposure to obscene material, prostitution and involvement in pornography.

526. In addition, the Government has established a Crisis Reporting Desk in the Department of Children's Services for sexually abused, neglected and abandoned children. Plans are at an advanced stage to start a Peace House for sexually abused children in Nairobi.

527. A number of NGOs and CBOs including the Anti-Rape Organization and legal agencies such as FIDA, Kituo Cha Sheria and the Public Law Institute help women or families to sue in cases of molestation, defilement, or rape. These organizations also create awareness about this problem and ways to combat it. However, their capacity cannot cope with the cases. The organizations work closely with the Government.

528. Kenya participated in the World Congress against Commercial Sexual Exploitation of Children held in Sweden in 1996. As a result, a National Plan of Action was developed jointly between the Government and NGOs under the auspices of End Child Prostitution in Kenya (ECPIK). A number of activities have been undertaken concerning child sexual abuse and neglect.

529. A coalition on child rights and child protection spearheaded by the ANPPCAN regional office has been established. The coalition brings together various actors including the Children's Department, the Ministry of Information and Broadcasting, the Ministry of Education, the Ministry of Labour, the Family Life Counselling Association of Kenya and the Child Welfare Society of Kenya. The coalition has achieved the following:

(a) Establishment of protection and reporting desks;

(b) Hiring of a part-time legal protection officer;

(c) Creation of Peace Houses for Abused Children who require physical, psychological and social reintegration;

(d) Holding provincial workshops with the aim of sensitizing and creating awareness in the communities on issues related to sexual abuse and exploitation;

(e) Producing a lot of advocacy materials and circulating them countrywide.

4. Article 35. Sale, trafficking and abduction of children

530. The sale, trafficking and abduction of children have been studied the least. It is believed that they have not substantially taken root in Kenya. The Penal Code (Cap. 63 Laws of Kenya), section 142, defines abduction as forcible detaining or taking away a woman of any age with the intent to marry or carnally know her. The Penal Code is reinforced by the Marriage Act (Cap. 150, Laws of Kenya). Any person in Kenya who compels, or induces by deceit and person to go from any place is guilty of abduction. Children are protected against crimes related to any kind of trafficking.

531. It is also a criminal offence to import, export, remove, buy, sell, or dispose of any person as a slave in Kenya. These provisions safeguard children from sale or exchange. It cannot be denied that these crimes occur. The media have sometimes reported, and recaptured stories of the sale of newly born babies in hospitals and orphanages. A Children's Home featured prominently in the press in June 1998. This matter is currently before the court.

Article 39. Development of rehabilitation programmes for physical and psychological recovery and social reintegration

532. There is no specific information on rehabilitative programmes for children affected by the tribal clashes. However, there are services for children in conflict with the law.

533. There are three categories of juvenile offenders' institutions in Kenya. These are approved schools, borstal institutions and probations hostels. These handle children offenders. They vary in capacity, sex, age, nature of offences and regional distribution. They are run by different ministerial departments.

534. There are 11 approved schools: Kabete, Othaya, Gitathuru, Wamumu, Machakos, Kericho, Dagoretti, Kakamega, Thika, Likoni and Kirigiti. Kirigiti Approved School, in Kiambu District, receives girls while Kericho, Thika and Dagoretti Approved Schools are for junior offenders. The rest are for older boys. An attempt is made to classify the children in terms of their rehabilitation needs such as protection, discipline or care.

535. Kenya's Approved School programme has existed since 1943. In the last seven years, these institutions have handled a steady annual population of 4,800 (within the 10-15 age bracket) out of which 300 are girls held at Kirigiti Approved School. Without exception, children are committed to the institutions through the juvenile courts.

536. Approved schools offer a number of Government-funded services within their wider rehabilitation programmes. The annual budgetary allocation for these programmes is not adequate.

537. Formal education, following the normal school curriculum and syllabus, and non-formal education and general literacy courses are provided in approved schools. Many children have benefited by sitting for the Kenya Certificate for Primary Education (KCPE) and the Kenya Certificate for Secondary Education (KCSE) examinations. Those who make it to secondary schools have the opportunity to join middle-level colleges and universities.

538. Over the years, a culture of good discipline has evolved. There is extensive use of psychosocial services, spiritual guidance (chaplaincy) and counselling by social workers and teachers.

539. Some of the institutions are provided with qualified health provider personnel - clinical officers, nurses and visiting doctors. They receive equipment and funds to procure drugs and vehicles to enable them to respond efficiently to emergencies.

540. Approved school programmes emphasize vocational training. These give the children survival skills either for self-employment or salaried engagement. In nearly every case, children are certified through government trade tests for artisan's craft/trade courses. These cover a wide range of vocational skills. The approved schools, with a few variations, offer courses in building, electricity, leather work, handicrafts, chemical processing, food processing, automotive/metal work, textiles, and animal/crop production.

541. The other institutions involved in juvenile justice administration are the borstal institutions and probation hostels. These offer comparable services to those in approved schools. There are currently two borstal institutions in the country: Shimo La Tewa in Mombasa and

Shikusa in Kakamega. Borstal institutions have a capacity of 500 boys aged between 16 and 18 years. These children have committed very serious offences like felony, rape, and involvement in drug abuse, narcotics and psychotropic substances. Discipline is highly regimented within the borstal system.

542. There are few probation hostels in Kenya. These can hold 252 children at any given time. Shanzu in Mombasa, Nairobi, Eldoret and Nakuru probation hostels are the only four such institutions in Kenya. The hostels are established to offer temporary placement for young offenders of 14-16 years for a period of less than 12 months. They ensure the safety of children whose lives the juvenile courts believe will be in danger if they are released back into the community. Borstal institutions and probation hostels have similar programmes of rehabilitation to those in approved schools. Children in these institutions who perform well in KCPE examinations are given chances to join those from approved schools at Kabete Secondary School, which is run by the Children's Department.

543. The three categories of the juvenile justice system have inadequate trained personnel. The state of repair of physical infrastructure varies from one institution to another. However, there are adequate recreation and playing facilities. Sleeping and feeding conditions are generally satisfactory.

544. The effectiveness of the reform programmes offered in the approved schools, borstal institutions and probation hostels is significant in terms of character reformation, usable vocational skills, self-reliance, and physical and psychological recovery.

545. The fully fledged welfare sections in the institutions give vital support through guidance and counselling. This helps the children to adjust and reform, and prepares them for return into the communities when they are released.

546. Besides government rehabilitative services, Kenya hosts nearly 600 local and international NGOs, community-based and religious organizations which have programmes for CNSP. These include formal non-formal education and training, health, counselling, shelter, advocacy, combating child labour, recreation, family and community socio-economic support, and spiritual and moral guidance.

547. The activities of these organizations are spread all over the country. However the majority are in the major towns where the bulk of CNSP are found. These include street children, children in employment, those sexually abused, child prostitutes, and orphaned and abandoned children. NGOs and religious organizations complement the efforts of the Government. This is especially significant because the budget allocation of key government ministries related to services has been drastically reduced. Although most NGOs and religious organizations have resources, it is difficult to coordinate their work. It is expected that effective coordination will be instituted under the Children Bill (1998), which provides for the creation of the National Council of Children's Services.

548. Follow-up and after-care services lasting for two years and targeted at social reintegration for released inmates show that the institutional programmes are effective. Follow-up services involve provisions of counselling and guidance both to and with parents or guardians. They help

to sustain the ex-inmates' confidence. After-care services also attempt to link these children with prospective employers. They also serve as linkages between ex-inmates, NGOs, the Department of Social Services, and the Kenya Union of Small and Medium Entrepreneur and Traders Organizations (KUSMET). This and other agencies assist in providing further vocational training, of tools and equipment to engage in the informal sector, and non-collateral capital to enable the children eventually to go into productive self-employment. They also help to smooth the transition into normal life in society.

549. Frequent rural-urban migrations and the precarious settlements of the urban poor in temporary slums where changes of residence are never planned have hampered aftercare services.

5. Article 36. Other forms of exploitation

550. There is no law regulating sports agents or sports bodies involved in the development of young talent in this field. In most cases, sports agents and bodies do not take the overall physical and mental development of children into account, thus exposing them to exploitation.

551. The same applies to children involved in the media. It is unlikely that their informed consent is sought before involving them in media activities such as teledrama. Where parental consent is sought, monetary considerations, rather than the best interest of the child may be the driving force.

552. Children are denied their freedom of leisure by extra coaching which has been introduced in many schools during weekends, after formal school hours and during holidays. In some instances, teachers, especially in rural schools, send children to run unofficial errands. These include making tea, fetching water and firewood, and weeding. In this way children are removed from their classwork. This denies them very valuable time for study and recreation.

553. HIV/AIDS orphans have been exposed to exploitation by relatives and other members of society, either as sources of cheap labour or other illicit activities. Attempts have been made to sensitize society on the rights of the child. KAACR is involved in setting up child rights clubs in schools. Currently 33 child rights clubs have been set up in Nyanza and Nairobi provinces.

554. The Kenya Girl Guides Association has integrated child rights in its training manuals. With support from Radda Barnen, the association has produced a Rights of the Child Handbook. Badges and certificates are awarded on completion of suggested activities which enhance the understanding and practice of the rights of the child as specified in the Convention on the Rights of the Child.

D. Article 30. Children belonging to a minority or an indigenous group

555. Kenya has more than 43 different ethnic or tribal communities. Each of these has its culture or language. In matters relating to personal laws, the communities have freedom to do things according to their traditions and customs, except where these are repugnant to morality and justice.

Constraints on special protection measures

556. Decreasing budgetary allocations to social services since the freezing of the Enhanced Structural Adjustment Facility in the early 1990s has led to a serious drop in the standards of the provision of services to children. Educational and vocational training facilities in most of the government rehabilitation centres are seriously themselves in need of rehabilitation. There are also inadequate educational and training materials.

557. Field services are affected by the shortage of vehicles. This hampers case investigations in most districts.

558. The Government increased the number of children's officers in the Children's Department by 96 new posts in 1997. However, most of the new districts operate without officers, since there have not been adequate funds to set up offices. Other relevant government departments are faced with similar problems.

559. In spite of the existence of many NGOs involved with the delivery of services to children, coordination amongst them is inadequate. This has led to the duplication of services, which has minimized their impact. Many NGOs in Kenya face severe financial and training constraints.

Annex

THE WAY FORWARD

I. GENERAL MEASURES OF IMPLEMENTATION

A. Article 4

1. Many groups such as lawyers, the defence forces, immigration officers, health and social workers, magistrates, police, religious leaders, parents, parliamentarians and other policy- and decision makers need to be sensitized on the Convention.

2. While some teachers have been trained on the Convention, there is a need to train more so that each school has a trained teacher. There is also a need to sensitize heads of schools and management boards of schools on the Convention. The Convention should also be incorporated in the school curriculum.

3. There is a need to translate the Convention into various vernacular languages, to air more radio programmes and produce additional information, education and communication materials.

B. Article 42

4. A review of the Kenyan Constitution is in process and the following issues will need to be considered:

(a) Incorporation into national law of treaties and conventions already ratified;

(b) Make reference in the Constitution to children's rights.

Expenditures on basic social services

5. There is a need to clearly identify children's activities in the budget so that a clear analysis can be done on the proportion that is spent on children. This may call for the sensitization of budgetary officers on child rights issues so that they are not addressed on an ad hoc basis.

II. DEFINITION OF THE CHILD

6. The definition of the child needs to be harmonized. The Children Bill contains a standard definition of the child. Strategies that build on positive traditional functions of the society in defining the child should be adopted.

7. The Constitution of Kenya should be amended to include the definition of a child. It should also make specific reference to the rights of children.

8. In order to effectively implement the definition of the child in the Convention and the proposed Children Bill, public awareness campaigns should be intensified.

9. Kenyan marriage laws should be harmonized in order to protect the girl child, and made compatible with the definition of the child stated in the Convention.

10. The principle of the best interests of the child as enshrined in the Convention should always be a primary consideration in defining a child in Kenya.

III. GENERAL PRINCIPLES OF IMPLEMENTATION

A. Article 2

11. There is a need to speed up legislative reforms as recommended by the Task Force on the Laws Affecting Women, and that on Laws Affecting Persons with Disability.

12. Concerted efforts should be made to sensitize the public on discriminatory laws, policies, customs and practices.

B. Article 3

13. The Children Bill has attempted to ensure that the best interest principle is addressed during judicial adoption and guardianship proceedings. However, resources should be availed to realize this.

14. The principle of the best interest of the child should be among the determining factors in considering and formulating development policies and programmes.

15. To contain the growth of slum dwellings and their attendant problems, urban planning policies and regulations need to be reviewed and enforced. Also, land policy and legislation need to be reviewed.

16. Improvement of the agricultural sector and the provision of services and infrastructure in the rural areas should be stepped up to discourage rural-urban migration and the proliferation of slums in urban areas.

C. Article 6

17. The Government should reconsider the effects of structural adjustment programmes on the provision of basic health care and its impact on children.

18. The rights to survival and development should be made enforceable under the law.

19. There is a need for more programme intervention, including sensitization and public awareness on survival and development rights.

20. Costs related to HIV/AIDS tests in the provision of maternal and child health services should be waived.

D. Article 12

21. Children's rights should be included in the training curriculum of all professionals dealing with children.

22. School managers should promote and encourage children's participation in decision-making processes within the school environment.

23. Dialogue that gives an opportunity for children to express themselves within the family should be encouraged. Resources are required for a public awareness campaign to promote this.

IV. CIVIL RIGHTS AND FREEDOMS

A. Articles 7 and 8

24. The following areas should be addressed to ensure that all births are registered and all children have equal nationality rights:

(a) It should be a national policy that questions on civil registration are included in national census and household surveys. If possible, independent surveys should be conducted periodically to determine areas of need;

(b) The system of registration should be computerized. The records should also be microfilmed, in order to preserve the identity of children;

(c) Personnel involved in registration should receive further training, and the existing workforce expanded;

(d) There should be more coordination between government departments, NGOs and other organizations that provide essential services like issuing identity cards, education, health and insurance, among others. This should create a linkage between registration and services and would be an incentive for registration;

(e) Awareness campaigns should be stepped up through the use of mass media and information, education and communication materials that target different cultural values and norms. More emphasis should be put on rural areas;

(f) Investigations on the background of destitute children should be stepped up by the Children's Department and other actors, so that the right to registration is respected;

(g) Service providers at the grass-roots level such as traditional birth attendants should be involved in sensitizing people and reporting births occurring at home;

(h) The current laws on citizenship should be revised so that the right to Kenyan citizenship is accorded to all children born of at least one Kenyan parent.

B. Article 14

25. More should be done to encourage a change in attitude in order to ensure full harmony between religious and cultural practices and individual freedom of choice.

26. The right of children of minority communities to enjoy their own culture and to practice their religion and language should be protected. This will help to achieve the obligations specified in the Convention of guaranteeing and promoting the freedom of religion, thought and conscience of children.

C. Article 17

27. There is a need to monitor public places where children have easy access to information that is inappropriate for child audiences. This should be accompanied by penal sanctions. Although the broadcast media give guidelines for films and television programmes shown, parents and guardians must take responsibility for monitoring the programmes watched by children in their care.

28. There is a need to recognize non-formal communication modes, especially folk media and popular theatre, as channels for voicing children's concerns.

D. Article 37 (a)

29. Kenya has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is expected that this will soon be made applicable domestically to allow full implementation of the provisions of that Convention in Kenya.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Article 5

30. There should be more capacity-building for social welfare officers serving families. This is necessary for effective counselling services which prepare youth for responsible parenthood.

31. Existing community-based services should be made widely available to families. This requires increased funding for development programmes, with the aim of reaching more deserving families.

32. New community-based programmes to support families in their obligations to bring up their own children should be developed.

33. There needs to be more support for district children's advisory committees to strengthen existing ones and to establish others.

B. Article 9

34. Programmes to address children whose fathers are imprisoned need to be explored since some of the fathers are the sole breadwinners.

35. Projects and programmes addressing ex-convicts should be strengthened to ensure the economic empowerment of parents after they serve jail terms; this will enable them to support their children.

36. There is an urgent need to address the problem of older children who may not be taken in by government, NGO or private institutions for the duration of their mother's incarceration, and who are normally left to fend for themselves.

37. The Extramural Penal Programme is a step in the right direction as opposed to jail terms for mothers charged with minor offences like illegal hawking and beer brewing.

38. More programmes to rehabilitate child offenders outside institutions should be developed by strengthening community-based rehabilitation systems.

39. Children's participation and opinions are very important in matters that affect them. For their own protection, they should be consulted more in decisions about separation.

40. Ways and means of reuniting children separated from their families by tribal conflict should be explored.

C. Article 10

41. Cases of families wanting to be reunited outside the country should take into account the child's best interest. The Immigration Department should work closely with the Children's Department to ensure that the plight of children of mixed nationality is given due consideration.

D. Article 18

42. The application of the Guardianship of Infants Act provides a compromise between various cultures and is in conformity with the principles expressed in the Convention. However:

(a) It is necessary to resolve the conflict arising from the application of different standards to children of monogamous and polygamous unions, and those of cohabitees and single parents;

(b) Uniform legislation on children irrespective of their cultural background should outline specifically what constitutes parental rights and responsibilities. This should achieve a much higher level of protection for all children than they currently enjoy;

(c) Kenyan courts have applied the common law presumption of marriage where parents have cohabited for more than four years. Elopement should be treated similarly. This should apply in situations where people have contracted monogamous marriages which they have not dissolved before entering into stable cohabitation with other partners. The children they have within such cohabitation deserve protection;

(d) Counselling programmes should be set up to help reunite the family after the imprisonment or retirement of immigrant workers. These will enable the parents effectively to resume responsibilities over their children after their absence;

(e) There is a need for counselling estranged couples to appreciate and maintain ties with their children.

E. Article 19

43. There is a need to harmonize organs dealing with abuse cases with respect to the prosecution of offenders and the treatment of abuse victims.

44. Officials handling children's matters, especially the police, hospital personnel, pathologists, court prosecutors and magistrates, should be sensitized to ensure that justice is done in child abuse cases.

45. Local authorities should enhance programmes for children with disabilities.

46. Referral systems should be strengthened to enhance the channels for reporting child abuse cases. To encourage more people to report such cases to the relevant authorities, Crisis Desks and Peace Houses should be made readily available in all provinces and districts.

47. More research about abuse is required to ensure that appropriate interventions are effected. Relevant statistics, i.e. of abused children and agencies offering services, should be made available. Further, the root causes of abuse should be established and addressed.

48. Witness protection programmes for witnesses in abuse cases should be established.

49. Counselling services for parents of children with disabilities should be more readily available to stem the abuse directed at children in need of special protection (CNSP), especially by family members.

F. Article 20

50. Able persons should be encouraged to take an extra child on a fostering or adoption basis. The public should also be sensitized on the plight of the homeless child. The Children Bill has set out provisions on foster care placement, and provides for penalties in case of contravention.

51. Sponsorship and outreach programmes should be explored to encourage home-community-based rehabilitation aimed at ensuring continuity of family ties.

52. There is a need for those involved in the fostering process, such as children's officers, social workers, care givers in institutions and counsellors for prospective foster parents, to receive professional training.

53. The appreciation of foster care should be strengthened by sensitizing the public on what foster care is. It should be emphasized that while fostering is temporary, adoption is permanent.

54. There is a need for arrangements to be made for children in alternative care systems to have proper identity - from birth certificates to identity cards - in order to safeguard each individual child's right to a name and nationality.

Need for a national survey of CNSP to capture remaining districts

55. The rules and regulations for children's homes developed by the Children's Department should apply to all children's homes regardless of their registration.

56. Consideration should be given to increasing the number of children's officers to enhance the Children's Department's monitoring role as defined in the Children Bill (1998).

57. Kenya should consider acceding to relevant international treaties like the Hague Convention to ensure the supervision and monitoring of adopted or fostered children, or those placed under the care of fit persons leaving the country. Records of such children should be maintained by the Children's Department and made available for perusal by approved officers.

G. Article 21

58. Although the Children Bill goes beyond the provisions of the Adoption Act, a system of cross-border supervision and a requirement for regular reports on the progress of the children should be established. Coordination of adoption matters should also be undertaken by the National Children's Council.

59. Counselling services for mothers should be available so that they can make an informed choice for adoption instead of abandoning their children.

60. Adoption should be looked at as being in favour of children rather than being solely in favour of the adopters. Children with disabilities and those who are HIV-positive can, and should, benefit from adoption.

61. The process of adoption should be made easier. More organizations should be encouraged to accept the challenge of offering quality adoption services by applying to be recognized as approved adoption societies.

62. Agencies wishing to be approved as adoption societies should be vetted seriously to verify their capacity to facilitate adoption.

63. Prospective adopters should be thoroughly screened to verify their fitness to adopt children.

64. All adoptions should be undertaken in the best interests of the child.

H. Article 25

65. Existing Children's Department and Probation Department case committees should be strengthened and after-care services enhanced.

66. The review of children in institutions should not be left to the institutions alone, but should involve the community to ensure the effective return and reintegration of such children.

67. The constitutions of voluntary and NGO institutions should allow for case review committees to include the local children's officer.

68. Training on the need for periodic review of placement as an integral part of rehabilitation should be undertaken. This would ensure that children benefit from placement in the various programmes, and that they are entrusted to the care of alternative caregivers if this is considered necessary.

VI. BASIC HEALTH AND WELFARE

A. Article 6

69. Surveys should be done on the nutritional status of CNSP, street children, children with disabilities, and children aged 5-18 years.

70. Advocacy should be stepped up on the effect of cultural practices on the nutritional status of children. Advocacy on other indicators like intensified micronutrient deficiencies, clean water and availability of toilet facilities should also be intensified.

71. There is a need to advocate for flexible working hours for mothers during the first six months after birth. Mechanisms should also be worked out with the Ministry of Labour to extend maternity leave from 60 working days to 90 working days, and for paternity leave of 10 working days.

72. Causes of maternal mortality should be identified and safe motherhood initiative activities intensified, especially in regions with high mortality rates.

73. There should be a system of comprehensive ante-natal care to provide HIV testing and counselling.

74. Sign language should be made the third national language to cater for the deaf.

75. A monitoring mechanism should be established to facilitate the writing of the next report.

76. More research should be done on socio-cultural factors that are detrimental to mother-child health such as STDs, HIV/AIDS and breastfeeding.

B. Article 18

77. The Government should come up with a policy that addresses the issue of CNSP, including street children. This should focus on their health and education while in the streets, reintegration with their families and assistance to such families.

78. Such a policy should also state the requirements needed by individuals or groups wanting to begin intervention programmes for these children. It should also curb practices which are likely to exploit the very children they are supposed to assist.

C. Article 23

79. In the forthcoming population census (1999) data on children and people with disabilities need to be collected analysed and disaggregated according to gender, age and disability.

80. A comprehensive health-care programme needs to be established to address the needs of children and people with disabilities.

81. Initiatives of the Kenya Society for the Blind and the Association of the Physically Disabled of Kenya should be spread throughout the Republic.

82. The Government should subsidize the equipment and apparatus required by children and people with disabilities. The Government should therefore provide extra resources for the cost of health care provision to people with disabilities.

83. Special clinics for different handicaps need to be brought closer to the communities. Medical staff should be educated on the need for urgent treatment of diseases that cause handicaps.

84. The Government should look into the concerns of children with multiple disabilities and children with cerebral palsy, since there are no existing provisions to address them.

85. There should be intensive advocacy on the Convention, addressing particularly children with disabilities.

86. Parents of children with disabilities should be trained to enable them to take care of such children.

87. The constitutional review process should take into consideration the plight of children and people with disabilities. In addition, the draft Bill on People with Disability should be enacted.

D. Article 24

88. The Government's commitment to facilitate the provision of safe water and adequate sanitation should be adequately reflected in the budgetary allocations for preventive health care.

89. The major constraints to be overcome to attain the child's right to the highest standard of health and medical care include:

(a) Poverty at the household level and hence low expenditure on health services;

(b) Inadequate resource allocation to the services, e.g. drug supplies. Kenya has an Essential Drug Supply Programme which supplies drugs in the district health facilities through zonal depots;

(c) The constant lack of drugs affects the utilization of health services, including promotive and preventive care.

Other health sector challenges

90. The Health Policy Framework should be implemented to waive cost-sharing for CNSP, for example street children. To facilitate this, street children should have some sort of identification.

91. The food policy should be reviewed to include nutrition issues and should be implemented immediately.

92. Refresher training for village-based volunteers and primary health-care workers in Turkana should be completed.

93. The establishment and administration of a reward system in cross-border cases in collaboration with Global 2000 and the Carter Center, Nairobi, should be facilitated.

E. Article 26

94. The policy of the fund for the disabled should change from the charity approach to a revolving fund to instil responsibility in the beneficiaries.

95. Owing to the increased abuse of the harambee spirit, there is a need to have a policy defining its areas of operation.

96. Efforts are being made to increase trainee intake in occupation therapy, physiotherapy and orthopaedic technician and technology courses in order to cope with the demand. Incentives need to be given to these groups to retain them in service. Resources to run the service efficiently should also be provided.

97. Training and recruitment of social workers should be stepped up. In-service training for other extension workers should be undertaken as was done in the Embu Institute of Administration. Such workers need incentives to boost their morale. It is also necessary to facilitate their movement since they cover long distances.

98. The Crisis Desk in the Children's Department needs to be decentralized and comprehensive publicity given to it. The possibility of extending it to NGOs and youth groups should also be explored.

99. The Children's Department should look into the establishment of coordinating mechanisms for service providers, so that data collection and services provision are well organized. Ways of improving the children's homes should be look into.

F. Article 27

100. School feeding programmes currently cover ASAL districts in the country. However, since the school milk programme is national, arrangements should also be made to replace it with a national school feeding programme where all pupils in public schools are provided with lunch.

101. The school milk programme needs to be overhauled if it is to meet its objectives. Since funds are inadequate, it should target a smaller population covering children up to standard four.

102. If the school milk programme is replaced by a national programme to cater for a midday meal in all public schools, there will be a need for inter-ministerial collaboration to discuss ways and means of sustaining the new feeding programme.

103. More logistical resources need to be allocated to the programme.

Housing

104. Housing has not been given the attention it deserves. The Government, through the relevant ministry, should come up with housing plans which avoid congestion and are affordable for poor families. Developers should be encouraged to undertake the construction of more affordable housing projects.

105. There is an urgent need to establish the number of street children who actually live on the streets, and those with alternative shelter.

106. The Matrimonial Causes Act should be reviewed to address this concern comprehensively.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

107. Increased funding should be provided to strengthen the formal education sector programmes and limit the emergence of a parallel non-formal system. However, there is a need for increased coordination between government agencies and organizations providing education and training especially in the non-formal sector.

108. The social dimension strategy of education introduced by the Government and aimed at cushioning students from poor families so as to retain them in schools, should be used to promote the interest of children with disabilities.

109. A policy guideline on the re-entry of girl mothers to school to ensure that fewer girls drop out of school should be introduced.

110. The school feeding programme should be pursued, together with nutrition and health programmes, to enable and enhance completion rates in schools, especially in ASALs. Owing to the high costs involved, further donor funding is required.

111. There is a Master Plan on Education and Training which emphasizes future priorities in terms of the provision of education.

112. A commission has been appointed to review the education system to ensure access, quality and relevance of the education provided, and children's future needs. The curriculum will be strengthened to cater for children with disabilities. It will take into account special needs and remove any discriminatory practices, especially in relation to practical subjects.

113. Increased child participation in decision-making in the school should be promoted so as to curb indiscipline in schools.

114. The education system should intensify the appreciation of cultural diversity in the school setting through increased integration of children from various regions, communities and backgrounds in national, provincial and district schools.

115. A policy and legal framework to enhance the provision, maintenance and safeguarding of recreational and leisure facilities, including playgrounds and public parks, should be created. Awareness of the rich and varied cultural heritage in Kenya should be increased through the radio. The full participation of children in leisure, recreational and cultural activities in the formal and informal sectors should be encouraged, having regard to age, gender balance, children with disabilities and regional balance.

116. Sensitization is being intensified in the family to enable the girl child to have equal time for play, leisure and recreation activities.

117. The Government is encouraging greater participation of United Nations agencies, NGOs, the private sector and the community in the provision of education and related services and facilities. In order to accommodate growth in enrolments while conserving development resources, existing schools will be expanded to full capacity, multi-stream institutions before new schools are established. The possibility of developing double shifts in high population density areas should be considered.

VIII. SPECIAL PROTECTION MEASURES

118. There is a need to intensify the creation of awareness on child rights and the municipal laws relating to children, especially once the Children Bill becomes law. This should involve children themselves and the general public. It should be done through such means as simplification and translation of the Convention and child laws.

119. Mechanisms need to be established to prevent ethnic conflicts and to safeguard children if such situations occur.

120. The Government will need to intensify training for juvenile justice administrators at all levels. Assistance from the international community will be required in this area, and should include the improvement of facilities for caring for children in conflict with the law.

121. The Government, in collaboration with NGOs and workers' and employers' organizations, will seek support to improve the conditions of child labour. The draft National Policy on Child Labour should lead to a sessional paper on the conditions and minimum age of employment.

122. Government and NGO rehabilitation centres need to be strengthened to cater for children who abuse drugs and those who have been abused. Kenya will need support to establish new, and strengthen existing, crisis centres for such children.

123. There is a need for more resource allocation for follow-up and after-care services in order to improve reintegration and rehabilitation services for children in need of protection.

124. Mechanisms should be established to enable children to have legal representation.

125. There is a need to set up and strengthen community-based rehabilitation for juvenile offenders.

126. Mechanisms for the care and support of HIV/AIDS orphans should be established at the grass-roots levels.

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